





Cordially Yours,
Chas. Lawrence

MY OWN STORY

An account of the conditions in Kentucky leading to the assassination of William Goebel, who was declared governor of the State, and my indictment and conviction on the charge of complicity in his murder

By
CALEB POWERS

Illustrated from Photographs

INDIANAPOLIS
THE BOBBS-MERRILL COMPANY
PUBLISHERS

Copyright 1905
THE BOBBS-MERRILL COMPANY

April

APR 29 1905
a
115561



PRESS OF
BRAUNWORTH & CO.
BOOKBINDERS AND PRINTERS
BROOKLYN, N. Y.

CONTENTS

CHAPTER I

BOYHOOD IN THE MOUNTAINS

PAGE

My reasons for writing this story — My ancestors — My life as a boy in the Kentucky mountains — Our removal to Brush Creek	I
--	---

CHAPTER II

MY FIRST SPEECH

I matriculate at Union College — The college debate — My first oratorical effort — I teach my first school .	9
--	---

CHAPTER III

THE GREAT DEBATE

I argue about the burning question, "Resolved: That the earth is round" — The judgment of my peers .	20
--	----

CHAPTER IV

COLLEGE DAYS

My life at the state college — I learn to drill — I teach school again — Illness — My appointment to West Point	26
---	----

CHAPTER V

A NEW OUTLOOK

I journey to West Point — A glimpse of the national capital — I prepare for examinations — The ordeal — I enter West Point	35
--	----

CHAPTER VI

SUMMER CAMP

- I spend the summer in camp — Hazing — I arrest my superior officer 43

CHAPTER VII

AT LAW SCHOOL

- I become a third-classman — My eyesight fails and I am forced to leave the Academy — I enter the law school at Valparaiso, Indiana 48

CHAPTER VIII

MY FIRST POLITICAL CAMPAIGN

- I am a candidate for the office of superintendent of schools of Knox County, Kentucky — I make a canvass of the mountain districts — I take part in joint debates — I am graduated from law school and elected to office 52

CHAPTER IX

MARRIAGE

- Responsibility of office — I begin to practise law — My marriage — The sudden death of my wife 61

CHAPTER X

AGAINST ODDS

- I am again a successful candidate — I take a post-graduate course in law at Center College, Danville — Stump-speaking 66

CHAPTER XI

THE KENTUCKY PROBLEM

PAGE

Affairs in Kentucky in 1899 — The Goebel Election Law — Opinion of Henry Watterson — The effort of the Democrats to have the law declared constitutional — The outlook for Democratic success in the campaign of 1899	71
---	----

CHAPTER XII

THE DEMOCRATIC MACHINE

The Democratic state convention at Music Hall, Louisville — Many contesting delegations — Excitement over the temporary chairman's decision — Bailiffs fail to preserve order — Election of Redwine as permanent chairman — Machine work — Stone proposes terms	77
---	----

CHAPTER XIII

THE CONVENTION DECIDES

Continuance of Democratic Convention at Music Hall — Despair of delegates — Judge Redwine refuses to entertain a motion to adjourn — Goebel is nominated — Democratic ticket — Independent Democrats repudiate the ticket of the Music Hall Convention — Objections of Prohibitionists — Anti-Goebel movement goes on — Denunciation of the Goebel Election Law	85
---	----

CHAPTER XIV

THE REPUBLICAN CONVENTION

Race for nominations on the Republican ticket — State convention at Lexington — I am nominated for Secretary of State	93
---	----

CHAPTER XV

MR. BRYAN VISITS KENTUCKY

PAGE

Goebel opens his campaign at Mayfield — His reluctance to mix with people — Republican campaign begins at London — Opening of anti-Goebel campaign at Bowling Green — Goebel refuses to take part in joint debate — Mr. Bryan on the stump for Goebel — Louisville election board removes election officers . . . 98

CHAPTER XVI

ELECTION DAY IN KENTUCKY IN 1899

Election day — "Repeaters' paradise" — Assembling of military — Republicans win by a safe plurality — Democrats claim election — Election board renders decision in favor of Republicans 105

CHAPTER XVII

THE REPUBLICANS STAND FIRM

Goebel contests decision of election board — Democratic caucus — Evidence of Mr. Harrel — Inauguration of Taylor — Rules of Contest Committee 111

CHAPTER XVIII

THE SHOOTING OF WILLIAM GOEBEL

Effort of Taylor's attorneys to remove Democratic members of contest committees — Suit to enjoin Taylor appointees from taking oath of office — Republicans seek to arouse the people — I bring the mountain people to Frankfort — Meeting on the steps of the Capitol — I go to Louisville for more petitioners — Goebel is shot — The excitement at Frankfort — The military is called out 118

CHAPTER XIX

MAKING POLITICAL CAPITAL

PAGE

- Demand for revenge — Governor Taylor convenes the Legislature at London — Democrats declare Goebel and Beckham elected and later falsify the records of the general assembly — A proclamation — Senator Goebel's death is announced, and Beckham takes the oath of office as governor 126

CHAPTER XX

AN APPEAL TO THE COURTS

- Sorrow over the death of Senator Goebel — Governor Taylor rejects the Louisville "Peace Agreement" — General assembly reconvenes at Frankfort — Two legislative bodies and two sets of state officials . . 130

CHAPTER XXI

DEMOCRATIC SLEUTHS BEGIN WORK

- Decision against Republicans — Action of Legislature final — Goebel partizans threaten to take forcible possession of the offices — Situation becomes warlike — The Democrats appropriate one hundred thousand dollars to discover and punish the assassin . . . 137

CHAPTER XXII

MY ARREST

- I visit my father and mother — Threatened with arrest, I seek safety in flight, but am taken from a train at Lexington — I pass a gloomy, apprehensive night in a cell 142

CHAPTER XXIII

FROM LEXINGTON TO LOUISVILLE

PAGE

Nocturnal visit of officers to my cell — Handcuffed, I am taken from jail, driven across country to a railway and hurried to Louisville — A defense fund of ten thousand dollars	150
--	-----

CHAPTER XXIV

MY PRELIMINARY HEARING

Before Judge Moore — The late T. C. Campbell's record — Wharton Golden's testimony — Dramatic scene, pregnant with dire possibilities, that finally passes away without bloodshed — Moments of great peril to myself — I am denied bail and go back to jail . .	155
---	-----

CHAPTER XXV

THE PROSECUTION'S PLANS

Arrest of Combs, Noakes, Youtsey and others — How Lawyer Campbell and Arthur Goebel secure a "confession" from Youtsey — Decision against Taylor and Marshall — Report of the grand jury, indicting myself and many others — Federal supreme court decides against the Republicans — Governor Taylor's flight to Indiana — Denunciatory Democratic platform	164
---	-----

CHAPTER XXVI

REPUBLICANS BARRED

My first trial before Judge Cantrill — Selection of a partisan jury — Disregard of the law for the purpose of insuring conviction — Campbell's statement in behalf of the prosecution	176
---	-----

CHAPTER XXVII

A POLITICAL NECESSITY

PAGE

Trained witness for the Commonwealth — George F. Weaver's sensational statement in regard to the shooting of Senator Goebel — Indictment for perjury, but no prosecution — Finley Anderson's false testimony	183
--	-----

CHAPTER XXVIII

THE VALUE OF AN OATH

Robert Noakes in the rôle of a star-witness — Later confesses himself to be a perjurer — W. H. Culton exonerates me after giving sensational testimony — F. Wharton Golden's evidence — Prosecution calls the Goebel press to its rescue	189
--	-----

CHAPTER XXIX

MY DEFENSE AND MY CONVICTION

Judge Faulkner's statement for the defense — My testimony for myself — Cross-examination by Lawyer Campbell — Address to the jury — Verdict of guilty, with penalty of life imprisonment — Juryman Porter — My card to the public	195
---	-----

CHAPTER XXX

AFTER THE VERDICT

I am again taken to the Louisville jail — My reflections on the way — I find myself a victim of injustice, with no prospect of redress — Charges and countercharges preceding the trial of Jim Howard — Summary of the testimony — Howard is convicted of shooting Goebel and is sentenced to death	204
---	-----

CHAPTER XXXI

TRIAL OF HENRY E. YOUTSEY

PAGE

Campbell's deftly woven statement — Hunted look of the defendant — His fierce denunciation of Arthur Goebel and paroxysmal display of emotion — His illness and his appearance in the court-room — Jury returns verdict of guilty, with imprisonment for life . . . 213

CHAPTER XXXII

A REPUBLICAN JUDGE ELECTED

Confessions by Anderson and Noakes, admitting they were bribed — Youtsey signs an affidavit exonerating me — I am encouraged by a change in the political complexion of the court of appeals . . . 220

CHAPTER XXXIII

A NEW TRIAL GRANTED

Four Republican appellate judges grant Howard and myself new trials — Colonel W. C. P. Breckinridge's arraignment of the Democratic judges — Continuation of the prosecution's "Hang and damn" policy — Captain Ripley's acquittal — Judge Cantrill's famous charge to the Grand Jury . . . 225

CHAPTER XXXIV

AGAIN BEFORE JUDGE CANTRILL

Governor Durbin declines to honor requisitions for Taylor and Finley — My second trial a repetition of the first — Judge Cantrill refuses to vacate the bench — Twelve partizan Goebel Democrats act as jurymen — Am again convicted, and sentenced for life . . . 232

CHAPTER XXXV

YOUTSEY AND THE PROSECUTION

PAGE

- J. B. Howard's second trial results in change of sentence to life imprisonment — Berry Howard's acquittal — Attempts to induce Youtsey to make a "new" confession — Torture at last produces a statement that is satisfactory to the prosecution — My own position becomes more grave 237

CHAPTER XXXVI

HOWARD'S THIRD TRIAL

- Cecil's remarkable testimony — Youtsey tells a long story, but fails to connect me with the so-called conspiracy to kill Senator Goebel — Admits having perjured himself, when confronted with affidavits — Is again convicted and sentenced 246

CHAPTER XXXVII

MY THIRD TRIAL

- Death of my father — I am not permitted to attend his funeral — Judge Robbins supplants Judge Cantrill — Another packed jury — Youtsey and Cecil testify against me 253

CHAPTER XXXVIII

CONDEMNED

- My closing argument in behalf of myself — Crowds listen to my review of the case, in which I arraign the prosecution — Jury, however, finds me guilty, attaches the death penalty, and I am sentenced to be hanged — Appeal to the higher court 259

CHAPTER XXXIX

WHERE MY CASE RESTS

PAGE

Tragic end of T. C. Campbell and peaceful death of former Governor Brown—Court of appeals for the third time declares my conviction illegal and unfair and grants me a new trial—I am awaiting the return of reason and justice	265
---	-----

CHAPTER XL

CONCLUSION

My story written under difficulties—I am surrounded by criminals of all degrees—Noise and impertinent curiosity, instead of privacy—Five years in prison and still no final determination of my case—An awakening of the people at hand	271
---	-----

APPENDICES

APPENDIX A	Affidavit of Finley B. Anderson	279
APPENDIX B	Affidavit of Robert Noakes	283
APPENDIX C	My Address to the Jury During My Third Trial	295
APPENDIX D	Instructions Asked, and Instructions Given, During My First Trial	469
APPENDIX E	Correspondence Between Governors Durbin and Beckham	478

LIST OF ILLUSTRATIONS

Caleb Powers	Frontispiece
Members of My Family	50
In My Earlier Days	64
William Goebel	72
Goebel's Home in Covington	90
Colonel "Jack" Chinn	100
Goebel and Chinn with Members of the Legislature . . .	112
Scenes in Frankfort	124
A Plan of the Capitol Grounds	134
On the Capitol Grounds	144
The Grand Jury	168
Some of the Others Indicted	186
Robert Franklin	198
The Judges During My Trials	234
My Address to the Jury	260
Scenes in My Quarters in Louisville Jail	272

MY OWN STORY

MY OWN STORY

CHAPTER I

BOYHOOD IN THE MOUNTAINS

My reasons for writing this story — My ancestors — My life as a boy in the Kentucky mountains — Our removal to Brush Creek

One of the masters of literature has said that a book for which the author feels an apology necessary should never see the light. It is in full agreement with this sentiment that my present task is begun, admitting, though, that if there is any book for which the author is tempted to apologize, it is one of an autobiographical character. When, however, an autobiography is written for the purpose of promulgating the truth, of putting before the public facts which have been misstated, distorted, misrepresented — especially in a case where life and honor are involved — there should be no hesitation on the part of the writer, even though the ego is more conspicuous than modesty might desire. Thoreau says in his *Walden*: “I would not talk so much about myself if there were anybody else whom I knew as well.” Let his excuse be mine. It is impossible to eliminate self from an autobiography; equally impossible to present certain facts and ideas in other than the first person.

Realizing all this, and more, I have decided to put before the reading public, just as though I were relating it of another, an account of such periods of my life as seem to be of interest, knowing that whatever value it may possess is not intrinsic, but comes of the unprecedented conditions and circumstances which have forced me into becoming a somewhat conspicuous figure in the criminal and political history of my state. Feeling that all the environments, ambitions and circumstances that affected my early life have a bearing upon my present position, I relate them as they recur to my memory. The charm of reading consists in recalling to mind what is already known. Literature is a confession.

My father, Amos Powers, was born December seventeenth, 1840, and was reared on Patterson Creek, Whitley County, Kentucky. About twenty miles distant, my mother, whose maiden name was Elizabeth Perkins, was born about seven years before, and spent her childhood and youth. The name of my paternal grandfather was Jesse Powers; the name of my mother's father was Thomas Perkins. Both were originally from Virginia, and on the way to the promising West, they stopped and cast their lot and fortune among the people of that slandered region known as the mountains of Kentucky. My grandfather, Jesse Powers, was killed during the Civil War, fighting for the preservation of the Union. My other grandfather, Thomas Perkins, enlisted in the same cause; he held no rank in the army, wanted none, and was always considered a genial comrade and an all-round good fellow. He was married twice, and had by his first marriage a large family, consisting of

three sons, Wiley, Sterling and Peter, and three daughters, Nancy, Margaret and my mother. There were no children by the second marriage. Thomas Perkins was a slaveholder at the beginning of the Civil War, but liberated his negroes before he became a volunteer in the Union Army. My uncle Caleb, for whom I was named, is the only brother my father had; they had one sister, Katherine. My uncle Caleb is an unostentatious, level-headed man, of a cool and calculating disposition. Neither he nor my father ever sought office. Both my father's and mother's people have led lives of comparative obscurity, rarely seeking political preferment; but, when they sought it, they were generally successful. A number of them from time to time have been elected to county and district offices.

In the early days the mountains of Kentucky afforded few advantages, and not many of my ancestors obtained more than a common-school education; but, with rare exceptions, the kinspeople of my mother, who were numerous, were men and women of exceedingly strong character, possessed of fine native ability, and took an active part in local affairs, while one of my uncles, Peter Perkins, was, at the time of his death, a man of considerable means.

My mother has been married twice, and by her first marriage had two children, Uriah and Nancy Blakeley. After her first husband lost his life in the Civil War, she lived several years a widow, and married my father August second, 1867. As a result of that marriage there are four children, John Lay, Katherine, Rebecca and myself. I am the oldest, and was born February first, 1869, in Whitley County, Kentucky, on the waters of what is known as Patter-

son Creek. My brother and sisters were born in Knox County, Kentucky, where my parents moved when I was less than a year old. My brother was born March third, 1871; my sisters, Katherine and Rebecca, March twenty-sixth, 1876, and June eighteenth, 1880, respectively. Some of my egotistic kinsmen have, upon a few occasions, stoutly maintained that we are descendants of Hiram Powers, the sculptor, and therefore related to the wife of President Fillmore, who was a Miss Abigail Powers, a descendant of Walter Powers. But as to the fact of these relationships, I am not prepared to speak. Be the relationships as they may, the chasing of pedigree is a harmless diversion, whether a man has much or little to chase. I leave mine here. Yesterday's triumphs belong to yesterday.

My father devoted his life to the farm and the education of his children. He always regretted that he did not adopt the law as a profession; consequently it was natural that from my boyhood his ambition was that I should be a lawyer. He began to train me early, and entered me in the public school of Knox County in my fifth year. Our home was two or three miles from the school-house, so I traveled that distance every day, along a country road, down Poplar Creek Valley to the country school, in search of some learning and not a little fun.

I remember well the old log house in which my education was begun. It had one window and one door; the logs were hewn oak; the benches were saplings split in the middle; auger holes were bored through the ends, into which legs were pushed in order to hold them up in the form of a bench, and these benches were placed against the wall, which

served as a back. The floor was of large, hewn poplar puncheons. The fireplace had a large open mouth that could have swallowed half the pupils without difficulty.

I remember taking an active part in the games, sports and mischief that went on at school. I recall, particularly, an incident in which I figured a little too conspicuously for my own peace of mind and body. After painting my face and hands with pokeberry juice, I walked into the school-room during study hours to witness the effect of my appearance upon the pupils, and forthwith felt the effect upon myself. My teacher soon persuaded me, with the assistance of a long beech limb, which he kept near-by, to go to the mill-pond and wash off the purple dye with which I had adorned myself. In fact, I was frequently corrected during the early days of my school life, but as I stood well in my classes, this in a great measure palliated my wrong-doing; and I escaped the teacher's correcting rod in many instances where I merited it.

It was during these days, and before I was thirteen years of age, that I fell desperately in love—at least, I thought I did, which served the purpose quite as well. The object of my affection was a sweet, mild-tempered little girl of about my own age, who brought me candies and apples, and with whom I walked home on my way from school. Young though she was, she never hesitated to declare publicly that she was my sweetheart, and that we would marry when we were "big enough." As these assertions reflected my own sentiments I felt quite gratified at her bravery in so courageously declaring them. She met me at the gate of life, and I thought if I could but cling to her skirts, she would take me to Heaven. It was my firm deter-

mination to marry her, and I possibly might have done so had not my father, with unfeeling disregard for our romance, moved from that section of the country. I did not wish to go away; I preferred to stay in the old place where I could be near, and occasionally see, my sweetheart; but fate was inexorable.

Our new home was on a farm of about five hundred acres, on Brush Creek, Knox County, Kentucky, where my mother still resides. We had been there nearly two years before I again saw the object of my admiration. During these two years, I had often thought of going to see her; but I was too young to think of going a-courting, and, as I had no business in her locality, I could only bide my time. Finally, I had an opportunity to attend the church of her neighborhood. Arriving there one Sunday, I awaited her coming with much impatience, but at last my eye fell on her. I remember that there were five ministers present on that day; and, as was the custom in this part of the country at that time, they all took part in the service, so it can be readily imagined that the ceremony was not short. All these preachers were what might perhaps be called uneducated men, and their discourses were phrased in homely verbiage, but what they said was nevertheless earnest and forceful.

Two of these gentlemen wore jean trousers, cottonade shirts, and brogan shoes. The men of the congregation, with few exceptions, had on rough, country apparel; while the women present wore sun-bonnets, calico dresses, large aprons and other paraphernalia to match, or intended to match. As is still customary in the mountains of Kentucky, nearly the whole congregation lingered about the church door

and in the churchyard, after the services, to exchange friendly greetings. It was in the churchyard, then, that I met the sweetheart of my school-days. Surely this was not the same girl I had loved so devotedly two years before! I scarcely knew her; she scarcely knew me. She was changed. She was no longer trusting and confiding in her manner, but shy and self-conscious—as elusive as the ripples that play hide-and-seek over the bosom of the placid lake. Her brown eyes sparkled more brilliantly, her dark hair was carefully arranged, her face was none the less beautiful, but it was not the face I had known. Lovers discover subtle changes, while time and distance only too frequently dissipate love, as the sun dissipates the morning dew. I suppose I was not prepared to find her almost grown into womanhood, and was consequently disappointed. She was no longer my ideal. I no longer loved her.

The crowd soon dispersed up and down the country road; some went across the paths through the fields, some on horseback, some on muleback, some afoot. Some horses carried one person, others two, and not a few bore even heavier burdens. As the members of this little congregation departed for their homes, or the homes of their neighbors, “How is your crop?” “Come to see us,” and “How are all at home?” were remarks frequently heard. Soon all were gone, and I was left alone in the deserted churchyard. I felt lonely, for I knew no one very well except my sweetheart, and I knew her no more.

For a few moments I was left in reverie. The sluggish waters of Poplar Creek crept by me near at hand; the shadows from the tall oaks standing in

the churchyard protected me from the burning rays of the sun. Two tall mountain peaks rose on either side of the creek ; there were corn-fields in the bottom-lands, corn-fields on the hillsides, but I was thinking little of stream, or sun, or growing corn. My thoughts were not of these. It is said that there is something in the surroundings of the mountaineer,—the solitude of the mountains, the close and constant intercourse with nature,—which causes him, at an earlier age, to take a more serious view of life than do those who dwell in less elevated lands. Be that as it may, I question whether, at any age, my disappointment could be more acute than on that quiet Sunday as I stood in the silent churchyard, looking at the past and future. A boyish dream was then and there left behind, and though I had perhaps no definite idea or plan for the future, yet I began to wonder, in a vague way, what it might bring forth. In this mood, half-melancholy, half-retrospective, I mounted my horse and made my way back to my home.

CHAPTER II

MY FIRST SPEECH

I matriculate at Union College—The college debate—My first oratorical effort—I teach my first school

My father's farm was, and still is, a very good one for the section of the country in which it lies. He always kept it in an excellent state of cultivation, retaining several tenants on the place. Plowing corn, chopping weeds, raking hay and doing a thousand and one chores about the farm, made up my occupation until the fall school began; and, let me say it in my own favor, I worked as well, possibly better, when my father was not looking at me as I did when he was. In his presence, I made footprints on the sands of time, plowing up and down Brush Creek bottom. I continued this at intervals until I was fifteen years of age. After that I worked but little on the farm. From the time we had moved to Brush Creek, I had been less wayward in school, and had confined myself closely to study, so that before I was fourteen years of age I had completed *Ray's Practical Arithmetic*, and had almost completed *Elementary Algebra*.

A short time before I was sixteen years old, I matriculated in Union College, at Barboursville. I was somewhat small for my years, had lived all my life in the country, among country people, and knew very little about town or city life. It had

always appeared to me that the towns and cities had a superfluity of folk. I had often wondered how people in these places made their living. I had been in Barboursville, my home town, on a number of occasions, and the people, as it then seemed to me, were all idle and well-dressed. I did not understand how this could be.

It was among these idle, well-dressed people that my father had decided to send me to school. The principal hotel-keeper of the place, Mr. W. B. Anderson, was an old friend of my father's, and to his house I was sent to board. He gave me a small up-stairs room, which I shared with two other college students. These were two of the leading spirits of the college, and they proceeded to initiate me rather rapidly. As a beginning, the morning after my arrival, they escorted me up to the college, and introduced me to Professor Hartford P. Grider, president of the school. He was a large, frank-faced, kind-hearted man, who seemed to realize at once that I was an inexperienced boy from the country, and needed his sympathy and guidance. When, from the little bag in which I carefully carried them, I pulled the books I used in the country school, he very kindly told me that these text-books were not used at the college, and that I should have to purchase others—a thing which struck me as something of an infringement of a boy's rights; for I had been accustomed to use whatever text-books I desired, or that chanced to be convenient. I saw that the college rules were evidently different from those of the country school, so I reluctantly bought a new set of books, and began my school career anew.

When the professor assigned me a patent desk (the

first I had ever seen) the eyes of every student in the room were fixed upon me. I was a new boy in the school. That I was from the country, my dress and appearances clearly indicated. Society punishes, not those who sin, but those who fail to conceal it, and my sin was apparent, for I was countrified beyond concealment. I fancied that a goodly number of my future companions looked at me sneeringly. I was not one of them, or had not been until a few moments before, and it struck me they were not particularly proud of their new acquisition. Taking this view of the situation, I did not care in the least whether they were glad or sorry to have me. I was there, and I meant to stay. At the first recess the boys and I had it out, as boys will, but after this all was smooth sailing.

Through the persuasion of my room-mates, E. B. Hemphill and John C. Main, I joined the literary society the first day I was at college. This was a new feature of school life to me; and it was the first society of the kind of which I had ever been a member. I was selected as one of the judges of the discussion which was to take place that night, and, in consequence, felt that I was being promoted rather rapidly. The society was to give a public entertainment the following night, but it became known on the night of my initiation into the society that the leader on the negative side of the debate could not participate in the discussion. After several unsuccessful attempts to fill the vacancy, my name was finally suggested, and I was selected. I was lacking in the elements of caution and prudence, so I accepted, without really knowing what was to be done on the occasion. I did not know that the whole town would be invited, and that it would

certainly come. I supposed the program would be similar to the one I had just seen rendered, and I was quite willing to take part in an affair of that kind, for I regarded it as a source of improvement. I was there to learn all that could be learned, as I saw it at that time.

At length I began to inquire of my schoolmates something about the nature of the coming entertainment. They told me, with a lightness of manner which ill accorded with my feelings, that the event in which I was to figure so conspicuously was to be a public performance in which the town-folk took great interest. They said that the legal and medical fraternity would turn out *en masse*; that the business interests of the place demanded that the business men and their wives and daughters, by their presence, should lend encouragement to the school; that practical fathers and interested mothers would be there to judge, by what they saw and heard, the school's fitness as a place to which they might send their sons and daughters; and that the élite of Barboursville would be present, because of the amusement the occasion would afford. Every town in America has its "smart set."

My heart sank within me when they were through with their tale, for me so full of unexpected news. It was apparent to me that I was in a bad position. What to do under the circumstances, I could not decide. My first impulse was to have myself relieved from the duty. My room-mates informed me, however, that it was then so near the hour of the entertainment that it would be impossible to draft a substitute. They went on to say, too, that to attempt to get myself relieved from the duty at that late hour would not be

acting a fair part to the society, of which I had so recently become a member. They closed their argument by declaring that the only manly course left for me was to prepare myself thoroughly on the points of the question at issue, and to acquit myself creditably. As these new acquaintances were my only advisers, I accepted their solution of the difficulty, and began the preparation of my address with the utmost zeal and ignorance. It was the first one I had ever tried to compose.

The day and night preceding my début on the "raging stump" were filled with soul-harrowing forebodings. Besides the newness of my position, which was in itself worry enough, there was the terrifying fact that I must make a speech to the learned and fashionable of Barboursville. In anticipation it was to me a very trying ordeal. Nor did Father Time call a halt to his fleetest steeds in order to give me an opportunity for preparation; the fateful evening came, just as usual, dragging behind it the draperies of night. I was in my room poring over my address, and trying to decide what to say, and how to say it, when the college bell rang loud and clear. This was the summons to the college chapel. When my room-mates left me, I had given them my promise that I would not fail them, so nothing remained for me but to go. Differing from the wife of one of our mountain representatives, who before attending the theater in Louisville, announced that she was going "but would not take part," I was not only going, but would also take part. I hurriedly gathered my copious notes on the negative side of the new and burning subject: "Resolved: That Christopher Columbus is

entitled to more credit for discovering America than George Washington for defending it," and made my way to the scene of combat. The house was crowded; as predicted by my two friends, the town had turned out in full force. It was the best-dressed audience I had at that time ever seen. I did not know then the year's fashions from those of the year before; but I learned later that a goodly number of those present were fashionably dressed.

The program was in progress when I reached the chapel. The affirmative speaker, Mr. S. A. D. Jones, was waxing warm on the merits of his side of the subject. I entered by the side door, and, in a timid step or two, reached the seat which was left for me near the center of the stage. That the audience was largely composed of women was a fact that greatly embarrassed me. I tried to regain my self-possession. I attempted to straighten out my notes and arrange the points of my argument; I could do neither. Mr. Jones, who was many years my senior, and who was accustomed to appear in public, seemed much at home on the floor. He was making a veritable opera-glass of his imagination, and was calling upon me to answer this, that, and the other argument when it should become my turn to be heard. I sat there wondering if I should attempt to do all he demanded of me, and what the people present would think and say if I did not. Finally, the affirmative speaker, in thunder tones, punctuated with violent gesticulations, finished his argument and left the floor, amid applause and laughter. When the enthusiasm had subsided, the chairman of the meeting announced: "The first negative speaker, Caleb Powers."

As there was nothing else to do, I arose and said: "Ladies and gentlemen, and Mr. Chairman." As the ladies and gentlemen were nearer to me I addressed them first, and, as nothing more brilliant or convincing than my first words occurred to me, I repeated them slowly and impressively. By this time all eyes were turned on me; my tongue was tied. Up to that time I had never questioned but that my hands and arms had been properly attached to my body; they had never before been in my way. That night they were not only in my way, but they seemed to grow and multiply until I could have sworn I was all hands and arms. The multitude of hands twitched nervously at my side, thrust my handkerchief into my pocket, only to withdraw it immediately, and shifted my notes from one to the other, all at one and the same time.

Perhaps I should have been able to follow my notes, had they not, with the purpose, no doubt, of verifying that part of the Scriptures which says "the last shall be first," succeeded in arranging themselves in that order. Realizing that they were perfectly useless to me in that condition, I crushed them in one of my numerous hands, glad to find that one of them at least could be put to use. I must have been in a meditative rather than in an argumentative mood, for several times I found myself lapsing into a silence which threatened to become permanent. When I succeeded in arousing myself, I was seized with an irresistible desire to repeat my original oratorical achievement of "Ladies and gentlemen, and Mr. Chairman." I restrained myself, however, and said something else, just what I do not know; but I do know that I failed to say almost everything I had intended to say. I felt like

one irretrievably defeated on the broad battle-field of life, a child scoffed at by its own — a fledgling in a foreign nest — but the audience applauded when I had finished; and this courteous appreciation of my pitiful efforts I have always regarded as evidence of the generosity of Kentuckians.

As I made my way to my seat, I was only conscious of an intense relief that my part was done. When the program was completed and the society had adjourned, the few friends I had made during my short stay crowded around me and congratulated me upon the "fine" speech I had made; others whom I did not know took me by the hand and gave me words of encouragement; they thought I needed it. Counting, then, from my first public appearance, thus began my public career — certainly not a very auspicious opening. In the college circle it had brought me some reputation, and in a short time I succeeded in gaining the good will of my teachers and fellow students.

At the close of the commencement exercises I returned to my father's home on Brush Creek. He was not displeased with my record at college, but told me that I must, in the future, earn the money with which to educate myself. My father's idea was to throw me upon my own resources. Though his means were limited, they were sufficient for him to have assisted me further, had he thought it the better policy to pursue. Self-reliance and strict economy in time and money were the great lessons he impressed, as well as the fact that education does not consist in mere book-knowledge, as many suppose. If the cook in the kitchen can bake a better johnny-cake than I, to that extent she is more highly educated. All knowledge is

related. We are all educated in something; all ignorant in many things — aye, in almost everything. My father decided that I should pave my own way to either success or failure; that the world in which I was to fight the battles of life was before me; and that whether I won or lost its battles would depend, in a great measure, upon myself. He believed that complete isolation from the world was a poor way to prepare for the world's work; that we grow proficient and strong by *doing*.

My idea was to teach a public school, if I could merit a certificate of qualification and obtain the school. I made application for the district school on Poplar Creek. One of the trustees, being a personal friend of my father's, was willing to employ me; one was openly opposed to me, while the remaining trustees made my obtaining a first-class certificate at the approaching June examination a condition precedent to my employment. They maintained that the school was a large one, and was entitled to a first-class teacher.

When the June examination for teachers was held, I was among the applicants; and a week later I had the good fortune to receive from the county board of examiners a first-class certificate, with the cheering information that I had the highest average of any of the applicants. Naturally I was pleased with the result of the examination, and presented my credentials to the trustees of the Kitchen District School. They complied with their promise, and accepted my services as a teacher.

I tried to make the most unruly boys in the school my friends, and I think they believed me when I explained to them that they brought upon themselves

whatever punishment was given, and that I disliked to punish them. Being but a boy myself, I could enter heartily into their games and sports. I dearly loved children then, as I do now, and it gave me as great pleasure to join in their pastimes on the playground as to witness their progress in the school-room. While strict discipline was necessary, I was always glad to forgive them, without punishment, any faults or wrong-doings except inattention to study and poorly prepared lessons. Sympathy and love are better than threats: they secure better work, save more souls. He who loves the most is the best teacher, the best preacher.

I went to the patrons in person and urged them to send their children to school; in this way, their coöperation was, to a large extent, secured. I felt keenly the necessity for awakening educational interests in that part of the country. The right use of one's faculties is life; the wrong use, death. Man must express himself in some way. If only the animal side of one's nature is developed, the soul never blossoms; the higher nature withers, dies.

Few of the school patrons were possessed of even a common-school education. The opportunities and facilities for the education of the parents had been few and meager, and these were not always embraced. They were satisfied with their opinions, content with their knowledge—a recipe for continued ignorance. Not having seen the best, they were satisfied with less. Their grandfathers had tilled the soil, which produced corn in moderation and boulders in abundance. They were doing the same thing and nothing more. They were not in touch with the spirit of the times; they were cut off from progress. They were not cog-

nizant of the possibilities in their own children. Young men with sufficient native talent, if properly cultivated, to cause their country to be proud of them and their achievements, were growing into manhood only to live as their fathers had lived.

While this was true of a great many, it was not true of all; some there were among the younger generation, who were exerting every energy to fit themselves for a life of future usefulness. Some fathers there were, who, though far removed from the centers of industry, and personally undisturbed by the spirit of progress or the mad race for place and power, still felt an anxious ambition that their sons and daughters should be *educated*, in the widest sense of the word, and prepared to take their places in the front ranks. Among these people I had been born and reared. I thought that I realized their needs, and I spared nothing to serve their interests to the very best of my ability. Others have taught more than I have, and better than I have, but none ever taught with more zeal or with better intentions.

CHAPTER III

THE GREAT DEBATE

I argue about the burning question, "Resolved: That the earth is round" — The judgment of my peers

During this, my first term of teaching, I organized a literary society, as an annex to the instruction given in the school-room. Other teachers throughout that section of the country had been successful in organizing societies of this kind, and public debating had become popular. I shall always remember some of these debates. Our subjects for discussion ranged from the most trivial matters to the gravest and weightiest affairs of state. Ministers, patrons, and teachers from different neighborhoods entered heartily into this argumentative warfare. We discussed the subjects at issue with such vehemence and gesticulation that the participants were themselves always exhausted, before they had exhausted the subjects for discussion. Could some of these oratorical gems now be heard by our city folk, they would be found far more amusing than minstrel, circus or theater.

There was one debate which particularly impressed itself upon my memory. Mr. E. B. Hemphill and I were pitted against two loquacious ministers of the neighborhood upon the up-to-date subject: "Resolved: That the earth is round, and that the sun is stationary." The debate was to take place on a Sun-

day afternoon, and two weeks had been given to advertise it thoroughly. The announcement that such an exciting event was to take place created considerable interest and no small comment throughout the surrounding country. There were some who held the earth to be round. Others contended that it was flat; that it had four corners; and that the Bible sustained them in their contention. One of the country teachers will be long remembered in that locality because of his candid admission that the position on the subject held by the majority of his patrons would decide for him whether he taught the "round" or the "flat" system in his school. My colleague and I in the debate took the position that the earth was round, and that the sun was stationary. We collected what proof we could to sustain us in our position, preparatory to "the battle of the giants."

After days of waiting the time for action came. The weather was all that could be desired. From far and near the country-folk came and crowded into a large, log school-house to hear that unholy discussion. The house was too small to accommodate the crowd and although there was a large church near by, it was deemed too sacred an edifice for such a debate. Crowding round the open doors, and the apertures where the windows should have been, stood that part of the eager audience that failed to get admission. They craned their sunburnt necks and strained their expectant ears to catch the words which were to determine for all time to come whether the earth on which they lived was a round, revolving body, or a flat, immovable surface; whether the sun, which gave it light and heat, rose early in the morning, traveled all

day for their especial benefit, and then labored all night in getting back to its starting-point to be ready the coming morning; or whether it actually stood still, and the world revolved around it. It was a momentous question. Many silvered heads set upon shoulders bent by burdens of care, and faces furrowed by Time's relentless touch — both of which bespoke a long life of arduous labor and constant hardship — could be seen among the audience. Knowing that Joshua had commanded the sun to stand still, and judging, too, from personal observation, they felt perfectly confident that the great illuminator of the universe sped swiftly along his daily course.

It was soon apparent to me that I was the champion of a cause which was, to the older among my audience, not only unpopular, but regarded as heretical in itself. My misgivings as to the unsympathetic attitude of my prospective audience were strengthened by the appearance of the two ministers who were to take the opposing side in the debate, and who came elbowing their way through the crowd, each with a Bible under his arm and each wearing a long, black frock-coat. On reaching the platform, the older parson, the Reverend A. J. Baird, who had a high classical forehead and a pious-looking face, called on old Brother Bays to offer a prayer before entering upon such an important discussion. Brother Bays, who was a venerable-looking man with a long, flowing white beard, rose slowly, and, in a voice of unusual melody for a man of his age, asked that God in His wisdom be present to control the trend of the debate; and that the young men, whose aged parents had lived Christian lives and had set for them Christian examples, be not tempted by Satan to harbor

in their hearts doctrines of disbelief, or sow in the minds of their neighbors' children, whom it was their duty to help, guide and direct, teachings which might ruin their lives in this world and damn their souls in the next. Brother Bays concluded with the earnest prayer that this would be the last occasion upon which the young men would range themselves against their God and their country's interests. This exhortation was responded to by fervent amens from many voices.

After this prayerful address it was patent that the only way to save my unfortunate colleague and myself from overwhelming defeat would be to allow every one present, the young as well as the old, to have a voice in the decision, instead of submitting it to elderly judges alone. My plan burst like a bubble, however, upon its very first suggestion. Our opponents insisted strenuously that the vanquished should know he was defeated; and the victor should wear laurels unclaimed by others. So only three judges were appointed. That was the first instance, of a packed committee I had ever witnessed; since then, my experience in this line has broadened.

The three judges were churchmen and good, honest, upright citizens, but their verdict had been formed before the argument began. What is it that prejudice will not lead the best of men to do? Mr. Hemphill, my companion in prejudged defeat, whose Roman nose, sensitive mouth and large, brown, well-set eyes, bespoke for him quick native ability and a talent for public speaking, opened the debate in a forceful speech. He was followed by the Reverend J. C. Partin, who made a broken, fiery appeal to the audience to be true to the teaching of Holy Writ. The thought of the pul-

pit is rarely in advance of the thought of the pews. It takes a strong preacher to move ahead of his flock and champion an unpopular cause, for to him comes ostracism, if not exile.

It was now my turn to be heard. Since my first effort at Union College as a speech-maker, I had kept myself much in evidence, speaking upon any and every occasion that presented itself. Speaking had a fascination for me and I was always eager to rush into the fray of public argument. The "stage-fright" period had almost worn away, and I was beginning to be able to think on my feet; but, in spite of myself, I still talked rapidly, and often coined strange words in my discussion, and used some of those already coined in a way never intended. There was one consolation, however: many of those to whom I talked did not know whether I was making new words or marring old. Although I had grown somewhat in grace since my first oratorical effort, I scarcely knew that there was such a word as elocution in the English language; and my gestures, if it is not doing violence to the word to call my physical demonstrations by that name, would have done credit to an untrained pugilist. They were in marked contrast to the timid manifestations of the tamer moment, when one hand is in partial use while the other is secreted at the back of the speaker, as if it had already done, or was about to do, something wrong. On this famous occasion, I used both hands and arms with a boldness sufficient to convince even a doubting observer that they were performing not only a very essential, but a very satisfactory part of my work. I had by this time become sufficiently versed in parliamentary proceedings to

know that the chairman should be first addressed, which I proceeded to do with much unction.

What was the effect of my remarks upon the audience I will not venture to say at this date, but I am very sure that I then considered them sufficiently forceful to make the sun move or the earth stand. My memory is equally alive to the fact that, in spite of my "eloquence," the judges decided against me as promptly as a Goebelite jury of the present day decides against a political opponent—the difference being that upon the first occasion I deserved my fate. The justice of that decision in that instance did not soften its sting. I knew the report would spread around the country, my little world, that I had been defeated in debate. I could see no solace for my woe. To increase my mortification, there was present a handsome brunette, at whose shrine I was then worshiping. I had gone down in defeat in her very presence. The meeting adjourned, and we traveled back to our homes on the flat world. On the way, the object of my admiration said to me: "You beat them all speaking, and if I were you, I would not care whether the judges decided for or against me." What balm to my wounded soul! I have always thanked her for those soothing words. To the lover all tokens of love are of equal value, and at that time I considered myself, indeed, an ardent lover.

CHAPTER IV

COLLEGE DAYS

My life at the state college — I learn to drill — I teach school again — Illness — My appointment to West Point

As soon as my school closed, I began making arrangements to attend the Agricultural and Mechanical College at Lexington, Kentucky, for the remainder of the scholastic year. The Reverend S. D. Tinsley, who was then my father's neighbor and who had been a godfather to me, heartily indorsed my plan of going to the state college, as the Agricultural and Mechanical College at Lexington is generally called. The Reverend Mr. Tinsley is a man of good education, is thoroughly public-spirited, and richly endowed intellectually. He often told me of his own college life, and narrated many anecdotes of his own youth and of his life before he became sorely afflicted by disease. Those to whom fate has done her worst often have no quarrel with it, or the world, but retain the cheerfulness of youth and keep their hearts filled with sympathy and love. Such is the Reverend Mr. Tinsley. And here is a good place to remark that cheerfulness, sympathy and love afford a ballast, as I can well attest, against all the sordid impulses and disappointing reverses of life.

My mother was not favorable to my going away to the state college. She argued that I could do quite as well in a college nearer home. I could see that she

realized I would not be much longer under the parental roof; that I was now preparing myself for the duties and responsibilities of life, and that I would soon assume them. Even to attend college at Lexington was a virtual divorce from home. My mother realized it, and, while it was a severe trial to give me up, she consented when convinced that it was best for me. A braver, nobler, more generous heart has never found lodgment in human breast than my mother's. There is scarcely enough cruelty in her whole being to brush the down from a butterfly's wing. Her life is as unselfish as the kiss of the summer's sun. Her children have been her world; for them she has lived. She has always relied implicitly upon what I said to her. How much better it is to be victimized occasionally, than to go through life filled with distrust!

After a stage-coach journey of sixteen miles from Barbourville to Woodbine, Whitley County, I reached the station of the Louisville and Nashville Railroad. In a few hours, the passenger train came shrieking over bridges and puffing among hills on its way through central Kentucky. I bought a ticket for Junction City, and boarded the train for my destination. A few idlers and gossips — those habitués of the railroad station — lingered round the depot as the train steamed out.

I had all the misgivings, as to my intellectual capacity, that usually beset the average boy with educational ambitions; just where I belonged, what were my capabilities, were problems which often puzzled me. Any satisfaction I may have felt in the few petty triumphs of my district-school days was quickly dispelled by the realization that the field of action, both

for myself and for the other contestants, had been too restricted to be a test of ability. Thus I was at sea, but I reasoned that if Providence had been meager in intellectual gifts to me, it was the more incumbent upon me to make the most of my poor endowments, that I might not be a drone through life. If, on the contrary, I was blessed with an intellect above the average, the greater should be my efforts to develop it and make of myself all I was capable of becoming, so that the greater should be my success in the days to come. After all, every blessing has its price, every misfortune its advantage. I had reasoned in this way about my intellectual capacity, from the time I was a mere boy, and was doing so now as I sped onward toward the fairest land on earth — the blue-grass region of Kentucky. I could not help marking, when I reached Kentucky's fairy-land, the contrast between the extensive fields of grass and the solemn everlasting hills I had left behind me.

Great, massive, colonial structures, with huge pillars in front — the character of architecture peculiar to Kentucky — stood far back from the road. The grounds were ornamented by tall, well-trimmed maples and other stately trees, with blue-grass growing beneath; well-kept gravel walks and driveways led to the doors of the handsome dwellings. I envied the boys born of these homes. I longed for their advantages and opportunities. I was discouraged as I contrasted their lot with mine. I thought of their wealth, their high social connections, their influential relations and friends, who could secure for them honorable positions in life; but above all I envied them the happy privilege of being able to remain in school ten months

of the year, while necessity compelled me to work five months of that time in order to obtain the means whereby I might remain in college the other five. I felt that it was all unfair, and that I had been born under an unlucky star. The train stopped at a station, and some of these fortunate young gentlemen boarded it. They were going to Lexington to attend the same college to which I was going, and there was such a marked contrast between them and myself that I envied them afresh. It was with these young men that I would have to contend in college, and I feared the result. I did not realize that their lives had drawbacks as well as my own, and that the ease and luxury which were theirs created in some cases an aversion to study. Few can stand prosperity. Emerson well says: "While he sits on the cushion of advantages he goes to sleep." But this was not true of all the boys, for some of them were splendid students.

But I am anticipating, for now I am only being driven for the first time toward the state college. When I stepped from the omnibus, I was ushered in and shown up two flights of stairs and lodged in a room in the dormitory. The term of college that follows the holidays had begun, yet few of the students were on the campus or about the building; the place appeared deserted. The loneliness reflected itself in the melancholy that seized me. Later, however, I found I had arrived during recitation hour; a great many of the students were at class, while others were in their rooms preparing to recite.

I had been in my room about fifteen minutes, looking at the bare, whitewashed walls, and wondering what kind of place I had got into, when I heard the

notes of a bugle. I did not know whether the house was afire, whether dinner was ready, or war begun, so I went forth to investigate. As I reached the college building, out from the rooms on either side of the hallway, down the two wide stairways, came one squad after another of gray-uniformed, brass-buttoned young fellows, keeping step in double file, and commanded by one of their number. On reaching the basement, the command was given: "Squad — halt! Right face! Break ranks!" At the concluding words, those in the squad who had held their arms at their side and looked straight to the front, uttering not a word, broke ranks and began talking. At the same time, others were coming into the building from different directions, and soon the hall was full of gray-suited young soldiers — some still poring over their books, some talking loudly, others laughing and jesting, while others sought a word with some fair friend that was nervously looking to see if Mrs. Blackburn, who had charge of the young women, was observing the forbidden conversation. The bugle spoke again, but in different notes this time. All over the hall could be heard the section commanders giving the military command: "Fall in!" After this followed the roll-call of the various sections; then the boys were marched off to the recitation rooms, and, in an incredibly short time, the great basement hall was deserted.

I was leaning against one of the pillars, as I watched the last class, with military tread, march out of view. It was all new and strange to me. Left alone in the recently crowded but now deserted hall, I realized that none of these student-soldiers had paid any attention to me. Some of them had looked at me inquiringly;

but none had offered a word of greeting. I tried to console myself with the thought that they did not know I was soon to be one of their number, though it seemed to me then that they should have welcomed a stranger no matter what his mission. I thought of my mother at home, and wished to be with her. I had never been so far from her before, and I did not relish the reception given me. I was homesick, but this I did not dare admit, even to myself.

I had never thought seriously, until then, of the military feature of the college, and wondered why soldiers were being made of the students. It seemed to me that one of the objects of education should be to teach people *not* to fight; I did not understand why they should be educated to kill one another. I did not want to be a soldier, and I was wondering for what position in life such a training would fit me. My reverie was broken by the rattle of a sword and the quick elastic step of the officer of the day, who approached me. He was of medium height and strongly built; his eyes were small and deep blue; his face was frank and open, while his heavy-set jaws were indicative of force of character. He saluted me courteously, addressed me in a kindly voice, and inquired what he could do for me. This was Captain C. C. Calhoun, who later won distinction as a lawyer. When I explained to him why I was there, he conducted me to the private office of James K. Patterson, the president of the college, to whom he introduced me, and then retired.

That the president was a hard student was indicated clearly by his pale complexion and studious expression. Sandy whiskers descended from his sharp

nervous chin, and the general outlines of his face and head were more nearly like Shakespeare's than those of any man I have ever seen. He was a man of few words, rather cold and calculating, with more head than heart power. When he asked me for what profession or business I desired to prepare myself, I replied that I had not yet determined, but I wanted to take such a course in college as would fit me to make a great deal of money, and to make it easily and rapidly. A broad smile illumined the president's face, and there was a humorous twinkle in his eye.

"Well, young man," said he, "I hardly think you will find in any college a course of study that will meet your demand. Whatever may be your calling in after life, to make a success of it you will have to give it thought, energy and industry."

This was a very disagreeable revelation to me. Before that I had held the idea that only the great, toiling, struggling, uneducated masses were compelled to labor; that men who were highly educated and held positions of power and influence were exempt from vexations, labors and worries. When a boy on my father's farm, I had envied the "lazy lawyer," as I then called him, who, during the long summer days, sat in his office far from the reach of the burning rays of the noonday sun, and, with a few strokes of his pen, earned more money than could be earned in a whole month by a man laboring on a farm. At that time I did not know that the world is in a state of unrest; that humanity is in a condition of general dissatisfaction; that each one is striving to obtain what he has not, and that each considers his lot the hardest; that all are searching for happiness, which few find;

that the farmer desires the leisure of the law office; that the lawyer longs for the so-called independence of the farm. It is known to all that the labor of the physician is often unappreciated and unremunerated; that the lawyer's life is one of arduous study and untiring work; that the office-holder and office-seeker are the slaves of the people,—at one hour they are sailing high on the wave of popularity and public approval; at the next they are shipwrecked on the shores of slander, defeat and disaster.

I, for one, little realized that the more exalted the positions, the heavier are the burdens and the graver are the responsibilities attached to them. I thought that those who labored least made the most money, lived the best and were freest from the hardships, ills and ailments of common humanity. For this reason I wished to be educated, that I might be among the fortunate ones! and so I informed the president of the state college. If his answer threw a damper over my expectations, it did not prevent me from deciding very promptly that if life was to be one long struggle, I would rather fight it with law-books than with hay-forks; therefore, on that day, I determined that I would be as good a lawyer as was in my power to be, and, at least, please my father in the choice of my profession.

For me, the half-year was a hard one. I had to compete with students, who, besides having the best of training before they entered, had been in college much longer than I had been. I was anxious to stand at the head of my classes; but, as I remember now, I did not stand at the head of a single one, although I labored hard to that end. In my school experiences at

home, I had been accustomed to hold a good place in all my classes, and it was very painful to me that I could not do so then. Still, I finished that term with a fairly good class standing.

At the close of the college year I returned home, taught my second school, and went back to college for another five months' study. During this term, in spite of my aversion to military life, Colonel D. W. Clark, a West Point graduate and commandant of the state college corps of cadets, made me a corporal in Company A. Perhaps whatever merit I possessed as a soldier was due to the fact that I was a strict disciplinarian; be that as it may, before the end of the five months, I was again promoted, this time to the position of sergeant. I stood fairly well in my classes, and before May of that year, I had become an active member of the Patterson Literary Society.

I returned to my home at the end of the college year and taught, this time in my home district, and went back to the state college the following winter. I was then promoted to the rank of second lieutenant in my old company; and before the end of the college year, I had achieved another success; for I was also considered by the college boys a fair debater.

During the month of May, of this year of my college life, I was stricken with fever and taken to my home. After a prolonged illness I recovered, taught another country school, then a subscription school at Boston, Kentucky, and again returned to the state college the following winter. In June of that year, 1890, I was appointed a cadet to the United States Military Academy at West Point, New York, and left my home preparatory to entering the famous school.

CHAPTER V.

A NEW OUTLOOK

I journey to West Point—A glimpse of the national capital
—I prepare for examinations—The ordeal—I enter
West Point

All the world knows that West Point is situated on the banks of the Hudson River in New York. To attend this far-famed institution of learning and military training, I began at once my active preparations. By this time, my dear mother had become somewhat accustomed to my absence from home. She no longer objected to my being at the state college which, at most, was not a long distance from home; but she little relished my going so far away from her as West Point. She was well aware of the fact that I would be permitted to return only once in four years and that, at the end of this visit, I might be sent farther away, possibly to some distant post in the West. My father, on the contrary, was willing to relinquish his long-cherished hope of seeing me a successful lawyer, if by so doing I might enter the Military Academy that had produced such men as Sherman, Sheridan, Lee and Grant.

Though my father had no love for war and was always a quiet, peaceful citizen, yet, when war seemed to him justifiable, whether public or private, he was ready for it. In fact, he was always willing to

defend the honor and dignity of his country. Moreover, he was willing that I should do likewise, if occasion demanded it, and had no objection whatever to my preparing myself for it. In my heart, I well knew I had little taste for a military career; I should have preferred to educate myself for the practice of law. But I was poor, and my poverty made it necessary for me to provide my own means for securing an education. It was, after all, education I was seeking, and, at that time, it seemed to me that it would be no mean end to my ambition to obtain this education at the expense of the Government and then, eminently fitted for the work the Government expected of me in return, to take up for my life profession, the calling that had been graced by some of the nation's greatest men.

I put behind me, therefore, the impulse to continue my preparations for a lawyer's career, and turned my face from my mountain home to begin the journey that would bring me to West Point and the threshold of the new life the Academy would open for me. It was about the middle of June that I started eastward. My arrangements provided for a few days in Washington. I had never seen my country's capital and, as I was preparing to enlist myself in the nation's defense should it ever prove necessary, it was of course excusable that I should desire to visit the seat of Government.

Congress was in session and I made my way to both the Senate and the House. In the former I was most impressed with the dignity and apparent idleness of the members. One senator was delivering a speech, but his associates paid him little heed. Some were

writing letters, a great many were reading papers, others were talking; but no one, it seemed to me, was paying the least attention to the oratorical effort of the member who held the floor. I could not help wondering why the gentleman continued speaking when, as it seemed to me, his address could accomplish nothing, falling as it did on a heedless audience. I was not then sufficiently versed in politics to know that he was speaking for reelection alone, that possibly his constituents in some distant state of the Union composed his audience, and that to these his remarks were addressed. Later, experience taught me that the papers friendly to his interests in the state he represented would publish his oration in full, carefully designating the points where "thunderous applause and prolonged cheers" greeted his periods, even though, in fact, the speech was not delivered in full and no applause whatever was heard.

From Washington I journeyed on to New York City. Here my eager eyes feasted on many things that we did not have at Barboursville—and I make this statement with all due respect to Barboursville. In the end, however, I felt somewhat out of my element; the bigness of the city, its noise, the roar of its traffic, its crowded thoroughfares, its tall buildings, dazed me, and I felt no reluctance at leaving when I boarded the *Mary Powell* (that, I think, was the boat's name) and we put out to midstream in the Hudson, bound for West Point.

Only ten days intervened before the June examinations at the Academy, and I determined to make the most of the time by entering the training-school at Highland Falls, a place some ten miles below West

Point, where, I thought, if I were extraordinarily diligent, I might refresh my memory somewhat and be all the better prepared for the examinations. At Highland Falls I found two dozen or more candidates for admission to West Point, all looking forward with increasing anxiety to the crucial tests that lay ahead of them. Many of these had been pursuing a special course of study at the place for as long as two years; nearly all of them were exceedingly proficient in the branches of study required. In spite of this, however, many of them expressed grave doubt as to their ability to undergo successfully the exhaustive examinations prescribed for entrance into West Point. This alarmed me; I had received no special training and had not, for years, reviewed any of the branches of study specifically mentioned, though I had taught many of them.

During the week or so that followed, I gathered much information concerning West Point. I learned, for instance, that hazing, as practised by the upper-classmen upon the poor plebe during his first year at the Academy, was by no means of a mild sort. I was bitterly opposed to tyranny of any kind, especially to hazing; and I assisted to the best of my ability in inducing a half-hundred or more of the candidates to organize for mutual protection, pledging ourselves to resist any and every form of hazing, should we be fortunate enough to gain entrance to the Academy.

The day of the examinations came, and we who were applicants were called upon to appear before the board of examiners. We were first examined for our physical fitness, and, in this, I had no credits to spare. I suffered much then, and ever since, with

stomach trouble, and my eyes were weak. Still I succeeded in passing. Then followed the mental examination, a test that was at once thorough and rigid, but scarcely as difficult an ordeal as I had been led to suppose. The subject in which the applicant's ability was put to the severest test was mathematics, while, in other branches, the examinations were comparatively easy. Two days of hard work were necessary, however, before the ordeal was ended and our fates had been written on our examination papers for unraveling by the board of review.

There were in all about one hundred and fifty applicants, and at the conclusion of the two days' examinations, some were in high spirits and many in low. But, before either the hopeful or the despondent could know with any degree of certainty the outcome of the examinations, several days must elapse. During this interval we were not idle, neither were we permitted to follow our own inclinations. On the contrary, we were somewhat a part of the institution and its discipline. This fact alone was sufficient to subject us to the initiatory processes of hazing. I well remember the first command given me by an upper-classman; it came during the dinner hour of the first day. Upper-classmen and under-classmen, seniors and plebes, were all seated in the spacious dining-hall, and, with devouring appetites, were rapidly disposing of the food before them. At this moment an elastic-footed upper-classman, with a frozen look, hurriedly approached me. He did not introduce himself. Whoever heard of an upper-classman introducing himself to a plebe or fourth-classman? Such a courtesy is not on record since West

Point was established. I was in the midst of my meal when the cadet reached my side. "Drag in your chin and stop slouching here at the table," he said abruptly.

I was determined to curb both my temper and my tongue; therefore I looked at him, smiling, and then slowly turned my eyes back to the table and continued my dinner without uttering a word or moving a muscle that might signify that I had the slightest intention of complying with his command. The carelessness of my demeanor incensed him. There was a breathless stillness in the hall; I looked about me cautiously and found many threatening and hostile glances turned in my direction. At the same moment, a poor plebe at another table was guilty of an audible titter, whether at my discomfiture or that of the officer who had spoken to me, I do not know. However, he was pounced upon with the remark: "Do you dare to laugh at the misery of one of your comrades?" This came from a surly-looking upper-classman at his table. Still I showed no disposition to obey; in truth, I was rather amused than frightened. The upper-classman who had addressed me glowered a moment, and turning on his heel, declared: "I will see you later. You shall pay dearly for your insolence." And I did.

There were, however, only four days of this anxiety and suspense. The time was devoted, for the most part, to "setting-up" exercises and, to no little extent, to our "proper" hazing. But the end came finally, when those who had taken the examinations were summoned to hear the result of the ordeal. We were lined up in the area of the barracks where the officer in charge announced that those whose names

he would call should fall out of ranks. Our formation was in alphabetical order, those whose names began with A standing at the head of the line. As it had been announced that the officer would call only the names of those who had failed to pass the examinations, my own anxiety can be readily imagined. I was obliged to wait until half the line had been disposed of before I could learn my own fate. I shivered like one with the ague; my breathing was labored; I felt as if life itself depended on my name not being called. The B's were reached, the C's passed, and slowly the line thinned as the officer approached my name. Finally the P's were reached; my suspense was intense. Two boys to the left of me fell out. Sickened with sadness, the poor fellows turned on their heels and walked away. Possibly the fondest hopes of their lives had been crushed, but none then sought to heal the wounds that must have cut deeply into their hearts. The officer continued to call the names as indifferently as though no one had been made to suffer. My own name did not pass his lips. Two men to the right of me were left standing, and then the line was again broken by those falling out who had failed to pass.

I had been successful! For a time I could think of nothing else. Yet I was fearful that there might have been some error, some oversight; that the officer might again refer to his list and find he had forgotten or neglected to call my name. This anxiety remained to harass me until the entire list had been read and the last name had been called. Then, folding up his paper, the officer announced that those remaining in the sadly depleted line were from that

time on cadets in the United States Military Academy. We were ordered to report for duty at the guard-house at ten o'clock that day. It is needless to say that my feelings of fear, dread and suspense were rapidly displaced by joy unrestrained.

For the few days following we remained in barracks; then the entire cadet body was transferred to the summer camp of instruction, and all text-books, for the time, were laid aside.

CHAPTER VI

SUMMER CAMP

I spend the summer in camp — Hazing — I arrest my superior officer

We had no sooner been established in camp than it became known generally throughout the whole corps of cadets that I had openly announced I would not submit to being hazed. This, it was apparent, only made the enemy all the more determined. Of the original number who had pledged themselves to resist this petty tyranny, only myself and one other still refused to submit to hazing. The others, gradually, one by one, ceased to offer further resistance and, in the end, became the victims of this upper-class despotism. The result was that Mr. Caldwell, who, I think, was from Pennsylvania, and myself were made targets for the whole battalion.

At this time there were probably half a hundred forms of hazing practised at the Academy. Among them were “doing double step”; “chewing stretcher”; “swimming to Newburgh,” which consisted in forcing the plebe to lie flat on the floor of the tent and imitate the motions of a swimmer in the water until, in the judgment of his tormentors, he had exerted energy enough to carry him to the little town of Newburgh, one mile up the Hudson from West Point; “sub-Sammy race,” which required two plebes, both

of whom were blindfolded, to feed each other rapidly with spoons from a bowl of molasses; "chasing pedigree," which consisted in compelling a plebe to trace his ancestry, beginning with his earliest progenitors and coming on down through the line until the commandant's dog and himself were eventually reached. Nor were these all; there were other forms of hazing, too numerous to mention, but scarcely less severe.

To the hazer, resistance was as salt to the roast. Imagine, then, the deep interest taken in Mr. Caldwell and myself. Nevertheless, we successfully resisted all forms of hazing, except, of course, the petty annoyances to which we were constantly submitted while in ranks and under the direct command of the upper-classmen. It was in our tents at night that the most exciting events occurred. This, too, after a day of wearying work, many manœuvres with artillery and no end, apparently, of small-arm drill. Usually I was almost completely exhausted when the day was done; but whether tired or rested, my nightly visitors appeared with clock-like regularity and indulged themselves in such annoyances as their ingenuity could devise. While in camp, each cadet was obliged to mount guard three times a week. The guard was divided into three reliefs, the first, second and third. Guard number one was put on duty at eight o'clock in the evening and was relieved at ten o'clock by guard number two, while guard number three followed at twelve o'clock and was in turn relieved again by guard number one, and so on throughout the night. It was while the plebe stood his post on such occasions as these that he suffered most from the upper-classmen.

It was the special duty of the guard to protect the sleeping camp from the attacks of an imaginary enemy, and, at all times, save when stormy weather forced them to seek shelter in sentry boxes, they were obliged to walk their beats with gun at right shoulder. Each sentinel was informed of the regular countersign of the night and he was instructed to pass no one who could not give the word to his satisfaction.

One sultry night, in the month of August, while I was thus detailed, something very unusual occurred to me. The night was quiet and, as is a habit with me, I had lost myself in reflection. I was in truth so oblivious of the surroundings and so completely absorbed in memories of the past and hopes for the future, that I heard no sound — nothing, until I was suddenly aware that some one was approaching my post. In the uncertain light of the moon, I recognized that it was the officer of the day who was advancing. Immediately I threw down my gun to the proper position and commanded him to halt. He complied at once with the command and I followed it, as is customary, with the order to advance and give the countersign. But here an unexpected difficulty arose. In the sudden interruption of my reverie, I had forgotten the countersign entirely, nor would any amount of mental effort on my part serve to recall it. In vain I struggled to remember the all-important word. I hoped the officer of the day, in answering my challenge, might himself throw out some suggestion that would aid me in recalling it. But even if he had thus unconsciously come to my rescue I could be by no means sure that he would not seek to entrap me by giving the wrong word. The officer, who was by this

time close to me, gave the proper pass, but I failed utterly to recognize it. Accordingly I again halted and calmly informed him to consider himself under arrest. I then called out the corporal of the guard.

Behold my predicament! A plebe had arrested a first-classman! It was unheard-of, preposterous; and, to make matters worse, I had arrested not only an upper-classman, but my superior officer as well, and, in fact, the ranking officer of the cadet corps. The only reason I could give for my action was that I had forgotten the countersign. What should I say to the corporal of the guard? When he approached I should not even be able to recognize the countersign when he gave it. Indeed, the situation was not only embarrassing, but decidedly interesting. My knowledge of military tactics was not broad at best, and, in the confusion caused by my fickle memory, I found all the information I possessed gradually growing more and more obscure.

There was, however, one thing to do—tell the truth. Every cadet on entering the Academy is put on his honor to do that, no matter what the consequences. In a moment the corporal had joined us; immediately I came to “present arms” and addressed him.

“I have forgotten the countersign,” I said simply; “I did not think when the officer of the day gave the word ‘reikiavic’ that the word was correct, but since you have given the same word, I discover my error.”

The speech was brief, but it was all I could say—all I had to say. I awaited developments. The corporal lost no time in administering his reprimand, declaring that I had been guilty of the most reprehensible conduct, that I had grossly violated my orders as a

sentry and to this offense had added the unsoldier-like conduct of arresting my superior officer for doing his duty. The officer of the day, however, was not so severe. He seemed somewhat amused at the whole affair and only added: "You must keep strictly within the sphere of your duty, sir. I shall have to report you for this." This he proceeded to do, and a number of demerits necessarily followed. The next day the whole camp knew of the occurrence, and the report that I had arrested my superior officer only served to add to the reputation I had already gained of being a "fresh" fourth-classman.

The summer drilling, swimming, dancing, training in the gymnasium, the regularity of my meals, sleep and the lack of hard study, had greatly built up my constitution, and on getting back to barracks, I felt better able to do the year's work, hard though it proved to be.

CHAPTER VII

AT LAW SCHOOL

I become a third-classman — My eyesight fails and I am forced to leave the Academy — I enter the law school at Valparaiso, Indiana

After the June examinations, the members of my class became third-classmen, and began themselves to prepare for the incoming plebes. We were now sufficiently promoted to be recognized by the upper-classmen. Cadets with whom we had come in contact every day for a whole year recognized us for the first time and called us by our names. It all seemed very strange to me. A number of upper-classmen approached me upon the subject of hazing, and wanted to know if, now the opportunity offered, I would ever haze any one. I assured them I never would, and discovered then and there for the first time that during the trying ordeal through which I had just passed, I had had a great deal of sympathy from many of the upper-classmen themselves. Let it be said to their credit that it is not every cadet who indorses hazing. A great many in their hearts disapprove of it. Each class expects and demands a certain obedience from the class below it; but not over one-third of any class makes a business of hazing. After the plebe has been promoted to the third class, he is no longer hazed, in the strict sense of the word; and he associates, on

terms of more or less equality, with the members of the class above him; but there has previously existed such a gulf between the plebes and all upper-classmen that it is rather difficult to bridge it over. In fact, there is always a distinction among the various classes.

Successfully past the most trying ordeals of a cadet's life at West Point — the hazing period — I felt that I was now on the threshold of a pleasant, though by no means easy or idle, career. But the plans one makes are not so easily carried out as they are conceived.

Just when I was congratulating myself on the outlook for the future, my weak and over-taxed eyes failed me, and I was forced to return to my home. A two years' rest and treatment partly restored them, and, on January first, 1893, I enrolled myself as a student of the law department of the Northern Indiana Normal School at Valparaiso, Indiana, having exchanged a few letters with its genial and efficient president, Professor H. B. Brown. I began at once to prepare myself for a career before the bar. It is only just to say, however, that my inclination had long turned toward politics. Even while at the state college I had a natural aversion to the semi-prison life led by our soldiers, and longed for freer fields of endeavor. Now that I had, at last, entered upon the study of the law, I felt satisfied; it was a gate that led into the green pasture of politics. Law and politics, as I viewed them, went hand in hand. To adopt the one as a profession, meant to enter upon the other as a calling. I had always been a close student while at college; and now that I was making special preparation for my chosen line of work, it was the more important that I give my studies my closest application and my best thought.

I became a member of the General Debating Society, and in all the discussions took an active part. I secured membership also in two other debating clubs that assembled at night during the week. In this way I gained much valuable experience in the field of public argument, and, in fact, was well enough liked by my fellow students to be elected the first president of the Southern Literary Society—an organization which had for its primary object the bringing into closer contact all the Southern students.

It was while taking an active part in this movement that I met Miss Laura Rawlings. We mildly tiffed at first, which is not a bad way of beginning a friendship. Disagreement is sometimes the flint on which the mind strikes fire. We all like flattery, but nothing is quite so depressing as continual sentimental adulation. Miss Rawlings was a member of the vocal music class, to which I soon attached myself, and also of the literary society; so we were, necessarily, thrown much together; and where opportunity was lacking, I provided it. After the first little bout our acquaintance was most pleasant and interesting; and, as our intimacy grew, and as I found that her gifts of mind and heart equaled her beauty and charm of manner, it is needless to say that this year at Valparaiso was the happiest collegiate year of my life. When the month of June came, Miss Rawlings returned to her home at Burning Springs, Kentucky; I remained at Valparaiso, intending to pursue my legal studies in a special class during the summer months and to devote myself to some branches of history and literature. But when we parted we were betrothed.

I had scarcely begun preparation for my summer's



My mother, Mrs. Elizabeth Powers

My father, Amos Powers

My brother, Captain John L. Powers

Myself at twenty-four, and Miss Laura Rawlings,
whom I afterwards married

My sister, Mrs. Rebecca Green

MEMBERS OF MY FAMILY

work, however, when I learned that, by reason of the adoption of the new constitution for Kentucky, superintendents of public schools were to be elected that year in every county in the state. For some time past I had intended, when the office was again to be filled, to enter the race for it in my home county. Therefore, I went home immediately and entered the race for the nomination on the Republican ticket. I had two opponents in the struggle for the nomination — Professor James P. Faulkner, now president of Union College, at Barboursville, and the Reverend Frank Hopkins, a Methodist minister of some reputation and considerable ability. I had been away at college for several years, knew but a small per cent. of the voters of the county, and was poorly prepared to play the uncertain game of politics with much chance of success.

I knew, but not intimately, most of the prominent people of Barboursville, and a few of them were warm personal friends of mine; but the majority of them had no reason to feel any particular interest in my candidacy. I had, however, become fairly well acquainted with the teaching corps of the county; had taken an active part in two or three county institutes; and had as many friends among them as any of my opponents, but had no relatives, either by marriage or blood, to give me a following in the county. Many of my mother's relatives lived then, as they do now, in the county of Whitley. My father had but one brother, and he was not a resident of Knox County. I was then twenty-four years of age, just old enough, according to the Kentucky statutes, to fill the office of superintendent of schools.

CHAPTER VIII

MY FIRST POLITICAL CAMPAIGN

I am a candidate for the office of superintendent of schools of Knox County, Kentucky—I make a canvass of the mountain districts—I take part in joint debates—I am graduated from law school and elected to office

The campaign work that I now began was not the first in which I had been engaged. On the contrary, when I was but eighteen years of age, I had gone to Whitley County to assist in securing the nomination of my cousin, Thomas Bennett, for the office of sheriff. I had, in fact, met his opponent in the race, Mr. Madison Moore, in joint debate. But this was my first work in my own behalf. To say that I entered upon it with some anxiety is to put it mildly, indeed. However, I was not blind to the influences and sentiment I was about to combat.

I knew, for instance, that my boyish appearance was one of the disadvantages which I should be obliged to labor against in this campaign. Like David Copperfield in the early part of his career, I was constantly made to feel that I was exceedingly young. To offset this in part, I began my canvass for votes in that particular part of the county reported to be the least progressive. Here, I thought, my appearance would not be greatly against me, while at the same time I should gain experience and knowledge that would

stand me in good stead in places where my youth might work to my detriment. Moreover, whatever errors and blunders I might make in my new field of labor I desired to keep, as Bill Nye kept his practice of the law, "as quiet as possible." It took about three weeks' daily riding to cover the territory. No hill was too high to be crossed, no creek or stream too long to be followed.

I had little difficulty in adapting myself to the conditions and environment of those with whom I came in contact, from the fact that I had been reared in that part of the country myself, and was without any superfluity of the luxuries of life. I was one of the great common people; I knew their tastes, desires, prejudices, and objects in life. The farmer and his crops, the blacksmith and his trade, the lumberman and his logs, were all familiar to me. All my interest was with them. I knew the meaning of daily toil and had felt the pangs of poverty.

In my tour over the county, I resorted to various little oddities which suggested themselves to my mind. I remember, upon one occasion, that I rode up to a little cabin—far up a long and lonesome stream. It was situated at the base of a great mountain side, which was covered with timber and filled with coal. It was late in the afternoon of a summer day; the shadows of the mountain had long since stolen over that quiet abode. The young wife, who had just blossomed into womanhood, was singing a weird melody when I approached the humble home. When she noticed me the music ceased, and she came timidly to the door. She lived in one of those out-of-the-way localities where the voice of the stranger is seldom

heard. For a moment she was ill at ease; but her large, fine, blue eyes, beneath a well-formed and beautiful brow, sparkled with native intelligence. She was one of the many in that section of the state possessing inborn ability, who, for lack of opportunity, were living lives of penury and obscurity.

It was easy to see that she was of a sunny disposition, with a fine sense of humor; so I felt that whatever I said would be received in the spirit in which it was intended. I asked the young woman if her father was at home. She smiled with a proud sense of possession, and told me that her father lived across the county, but that her husband would be home soon. I then told her my business, and left her with the injunction to tell him when he returned that the homeliest man north of the equator had called to see him that day and wanted his support in the coming precinct convention. I had remained on my horse, so, after explaining my mission, I bade her adieu, and pulled the reins of my bridle, preparatory to leaving the cozily-kept cabin and its happy inmate. She laughed aloud at my message to her husband, but detained me to say that he would not know who desired his support. With the reminder that the description I had left of myself would be sufficient to identify me, I rode away. She stood in the doorway looking after me and, no doubt, wondering what manner of man she had met.

In the meantime, the people were calling me "a kid," "a boy" and "young Powers." The Republican county committee had held no meeting, and had made no arrangement by which the nomination should be made. It was important, therefore, for me to arrange matters so that the people who knew me best would

speak first as to my character and fitness for the position I sought. With this as one of the objects in view, I entered into negotiations with my opponents. I succeeded in making satisfactory arrangements with them for the first convention to be held in Poplar Creek voting precinct, where I had taught my first public school. When the voting lines were drawn up and counted, three-fourths of the voters present had voted for me.

The next convention was held in Brush Creek precinct, in which my father had lived for more than twelve years. There were about one hundred voters present. After the speech-making, our lines were formed, or rather the lines of my opponents failed to form. I did not lose a single vote. I never felt quite so happy in my life. To see the people among whom I had been reared stand as one man for my nomination filled my heart with lasting gratitude. The people of my home had spoken. I knew their voices would be heard throughout the county.

After visiting all the voting precincts in the county except Barboursville, I had more delegates to the general convention to be held there than both of my opponents combined. It was not wholly without reason then that, before holding the precinct convention in Barboursville, both my opponents withdrew from the race, and I was nominated by acclamation.

I had won. My suspense was over. My friends were enthusiastic, and, of course, called for a speech. In a few words, I tried to express my gratitude for the honor conferred upon me and for the number and the loyalty of my supporters as well as for the services they had so kindly rendered me. I assured them that

if the opportunity ever offered I would serve them with the same fidelity with which they had served me.

Though the county was Republican, there had not been a Republican superintendent of schools in Knox County for a quarter of a century. All had been Democrats. There had also been Democrats elected to the other offices from time to time, for many years. Party lines had never been tightly drawn and a great many voters had insisted on voting for what they called the "best man."

In due time, John T. Hays of Barboursville, nephew of Napoleon B. Hays, afterward attorney-general under Governor Beckham, a well-educated man and a lawyer of no mean ability, announced his candidacy for the office of superintendent of schools. He was, and is, a partizan Democrat, but on this occasion ran an independent race. He selected his own device, and maintained that the office was non-political; that educational qualification and general fitness for the position were all that were necessary for a candidate to possess; that politics was not taught in our public schools, and should not be, and, therefore, should not influence the county superintendent in the discharge of the duties of the office.

About two weeks before the election, Mr. Hays and I arranged a series of joint debates, or rather I arranged the debates and places of speaking and invited him to meet me—an invitation which he accepted. He is an aggressive and forceful man, but not an eloquent speaker. It was to my advantage to introduce politics into our discussion as often as possible, while it was to his advantage to keep away from the subject. He tried, naturally, to force me from the realms of

politics into those of education; and in turn I tried to force him into the discussion of politics as well as of education.

On November eighteenth, 1892, soon after Mr. Cleveland had been elected President of the United States, the Democrats of Knox County, celebrating their victory, had dragged a dead racoon through the bonfire-lighted streets of Barbourville. The leader of the torch-light parade, in a burst of oratorical enthusiasm, had declared that the whole world had gone Democratic, except the state of Ohio, hell, and Knox County; and a good brother in the audience, with his hand upon his heart, asserted that they would carry all of them next time. The Republicans of Knox County remembered this occasion and also how liberal they had been in dividing offices with the Democrats. I recalled these facts to those who might have forgotten them, and informed my opponent that for the supremacy over one of the places mentioned by his enthusiastic supporter, after the election of November, 1892, the Republicans of Knox County would make no contest; but in the state of Ohio and the county of Knox, the Republicans intended to manage public affairs. My opponent, however, felt equally confident of victory, and showed it both in demeanor and speech on the day before election.

At this time I ascertained, to a certainty, that my name did not appear on the ballots. The county clerk was a cousin of my opponent and had permitted himself to be influenced by Mr. Hays' supporters. When I arrived in Barbourville from Poplar Creek voting precinct, my friends had reached a decision as to what should be done in the premises, and were then drawing

up instructions to be signed by the county chairman, setting forth a section of the election law to the effect that I could still be voted for by every voter writing my name on the ballot; and in addition were directing that the election officers in the respective precincts should allow qualified voters to vote for any citizen they desired, by so writing his name in the proper place on the ballot. These instructions were signed by the county chairman, and were carried to every voting precinct in the county.

When the polls opened the next morning, the election officers of the various voting precincts, half of whom were Democrats, were found to have been supplied, by the friends of Mr. Hays, with copies of the new election law, with certain isolated passages marked. These, if strictly construed, would have been a bar to my receiving any votes on that day. The passages were underscored with pen and ink. It was with these mutilated portions of the law that the Democratic election officers intended, and in many instances tried, to prevent my friends from voting. Adding insult to injury was more than peace-abiding citizens would endure without some demonstration of disapproval, and especially was this true when the injury aimed at robbing them of the sacred right of suffrage. The Republicans of Knox County were boiling with indignation. Their liberty was at stake, and they were ready to defend it. In every precinct in the county where there was resistance to qualified freemen casting their votes, determined men fought to overcome it. Many of the Democrats were outspoken in their denunciation of the attempted theft. All day my name was written by the liberty-loving voters of the county,

and, when the polls closed, my majority was six hundred and fifty. Under the circumstances I had not expected it to be so large. In a few days the board canvassed the returns of the election and finally issued to me a certificate of election. This was in November, 1893; but my predecessor's term of office did not expire until August, 1894.

As I was extremely anxious to complete my course in law before bidding good-by to my college days, I hastened back to Valparaiso to accomplish that end, if possible. My classmates had heard of my victory and gave me a hearty reception upon my return. I met a great many friends in wandering about the old haunts. Miss Rawlings, with whom I had spent so many pleasant hours, was not there; but she soon returned to reënter college. I had been successful in my race for superintendent of schools, was progressing nicely with my legal studies, and now was with my betrothed often. I had good reason to be happy. I joined a debating society or two; was often a visitor to others, and took great interest in parliamentary law. The Southern Literary Society flourished, and its members derived much pleasure from its social features. The General Debating Society continued to flourish as before, and I took an active part in its proceedings also.

I was very fond of my study of the law, and, as is usually the case when one's interest is aroused, stood well in my class. When graduation day came, after many farewells, I left for Barboursville, Kentucky, to take charge of the office to which I had been elected and to begin the practice of my profession. I was admitted to the bar at the July term of the Knox circuit

court, 1894; and formally took charge of the educational interests of the county the thirteenth of the following August. I entered at once into active school work, which I soon found was beset with many difficulties.

CHAPTER IX

MARRIAGE

Responsibility of office — I begin to practise law — My marriage — The sudden death of my wife

One who has never had the good, or bad, fortune, however it may be regarded, of being a public servant, can never understand just what it means to deal with the public. But from experience I can say that the task is particularly burdensome when that servant is superintendent of public schools in any county in Kentucky. This may be equally true in other states, but I can only speak of my own. The work of a teacher seems to me to come nearer being divinely noble than any other work performed by one human being for another. To take a young, pliable intellect, uninformed and unaroused, and breathe into it the desire to know, train it for the intellectual contest of life, inspire it with lofty motives, prepare it for great duties and grave responsibilities, is almost a divine calling; and on the shoulders of him who commissions those who teach, the responsibilities are all the greater.

All this time I found myself becoming more firmly intrenched in my determination to practise law. I continued to be a very diligent student, but with all my diligence and study I knew very little about the actual practice of my profession. I had "hung out my shingle," but it did not prove to be a very catching

card. At any rate my clients, like angels' visits, were few and far between. A great many consulted me, but few employed me. To these I was often tempted to say what Mr. Alva N. Cade of Illinois, a member of my class at Valparaiso, said to the genial professor, Mark L. DeMotte, dean of the law department. Professor DeMotte asked him what he would say to a client who presented to him a certain series of facts in a case, as related by the professor. Mr. Cade hung his head in puzzled meditation for a moment. Then, with the celerity of a gust of wind, he replied: "I would advise him to consult a lawyer."

In the cases in which I was employed, I met with reasonable success. I made it a rule never to take a civil case unless I believed the law to be on the side of my client; but in criminal cases I tried to do what I could for nearly all who came to me for assistance. I was particularly fond of the law, and found both the office work and the work in the court-room very congenial, and longed for the time when I could devote my whole attention to the profession. Perhaps the greatest proof I can give of my disinterested love of my work is the fact that I loved it for itself, and not alone for the money I could make by its practice. I studied because I wanted to know the law. Continued dabbling in politics, however, proved in the end to be even more fascinating to me than the law.

During these months my admiration and affection for Miss Laura Rawlings, to whom I had been engaged for some time, still grew; and on January twenty-second, 1896, we were married. I had bought a home in Barboursville some time before, and in a few months after our marriage we there took up our resi-

dence. If supreme happiness ever belonged to earthly beings, it was ours. We both agreed and feared, however, that it was too perfect to last. The thought was prophetic, but the end of our bliss came in a way little anticipated.

My young wife, without the slightest warning, was stricken with that deadly disease, cerebro-spinal meningitis; and, in spite of previous perfect health and unusual strength, she succumbed after a month's awful struggle, during which time there were few moments of consciousness. She died at my father's home, on July twenty-sixth, of the same year we were married. The fondest hopes of my life were blasted. What had seemed troubles before now ceased to exist. A great sorrow sinks all minor annoyances into oblivion, and for a time, indeed for all time, grants a respite from all petty, trivial cares.

Usually the instinct of a human heart is to draw the veil of silence over such grief as then was mine, but, by a strange chain of subsequent circumstances, even the most cherished feelings of my heart have, to an extent, fallen into the hands of the public. Such being the case, my version of the different episodes of my life will, perhaps, be as acceptable from my pen as from that of another. If, then, it comforts me to pay a tribute to that pure, devoted young wife who, during the few months she was left with me, commanded the highest admiration and the tenderest devotion of which my nature was capable, I feel that it would be disloyal to her sweet memory to remain silent, from the fear that I might be accused of "wearing my heart upon my sleeve for daws to peck at."

I do not, then, hesitate to speak of the perfection of

her character, the brightness of her intellect, her personal beauty and the purity of her soul. As men judge all women by those with whom they have been most intimately connected, my ideal is a high one. While not a member of any church, my wife was a Baptist, and was possessed of a beautiful Christian spirit. I do not hesitate to say that when my wife died even death itself held no terrors for me. What is this world but a graveyard of buried dreams? My wife lies in the cemetery at Barboursville, and upon the slab that marks her grave are a few words, telling simply what we were to each other. Like Robert Browning after the death of Elizabeth Browning, I faced echoing rooms of my desolate home, while my heart cried, "I want her, I want her."

As time went on, and as the first keen edge of my grief wore off, I felt the necessity of directing my life into some more natural and less morbid channel. I turned again to my work, and threw myself into it more zealously than I had ever done before. I had a double object in view: first, to divert my mind from my grief, and keep it so fully occupied that I should have no time to brood; and, second, believing that my days of social and domestic happiness were at an end, I determined that disaster should not overwhelm me on every road, and that my life, as far as it was in my power to make it so, should not be a failure from a business standpoint. "The sure cure for all private griefs is a hearty interest in public affairs," said Burke. I tried to profit by his philosophy and, therefore, kept every hour in the day occupied with the study and practice of law and with my duties as school superintendent, except such times as I set apart for exercise and sleep.



My boyhood home on Brush Creek

Court-house at Barboursville, where I began the practice of law in 1894. The cross indicates the office I occupied as Superintendent of Schools

My home in Barboursville during my brief married life

IN MY EARLIER DAYS

I took my daily walks with as much regularity as I took my meals. I found this essential to my health, which I had foolishly impaired by overwork at college.

I have never married again. While it is doubtless true that the human heart can more easily love when its depths have once been sounded, still it is further true that arduous labor, intense thought and weighty burdens require such a concentration and taxation of one's energy that there is little left for the soft sentiments of love, and a man must admit that after he nears the age of thirty, he becomes more parsimonious of his affections.

CHAPTER X

AGAINST ODDS

I am again a successful candidate—I take a post-graduate course in law at Center College, Danville—Stump-speaking

The first of the year of 1897 found me again hotly campaigning for the nomination for superintendent of public schools of Knox County. Being a Kentuckian, I naturally desired to succeed myself in office. Mr. E. B. Hemphill, whose father was ex-sheriff of the county, was, intellectually, the most gifted of my opponents. Mr. A. A. Hopkins, “another Richmond in the field,” was a brother of the gentleman who had been my opponent in the first race for the nomination, and was developing a great deal of strength because of the defeat of his brother a few years before. My other opponent, Mr. Thomas C. Jarvis, was a son of ex-Representative John D. Jarvis, and also a nephew of Henderson Jarvis, who was the sheriff of Knox County at that time. He was related also to some of the most wealthy and influential families.

Later in the canvass, my opponents pooled their strength, and Mr. Jarvis and I fought the fight to a finish. It was a hard struggle, but I won. During my term of office, I had settled a number of school disputes, had rendered a great many opinions in contested cases, had refused teachers’ certificates to about half the applicants, had condemned several school-houses as

being unfit for use, had condemned the furniture of nearly all of the others, had changed the boundaries in several of the school-districts and had refused to change them in others, had selected sites for a few school-houses, had appointed several trustees and had refused to appoint others, had sat as judge in cases where charges were made against trustees and teachers for immoral conduct, or for failure to perform their duties, and in a great many ways too numerous to mention I had, in my official capacity, taken action, which, as a matter of course, was adverse to some. These, it is needless to say, had a host of followers. Many of them had formerly voted for me, and felt that they should be rewarded. Their bitterness, therefore, was intense when I failed to carry out their expectations. I had, if their own words can be relied upon, proved "disloyal, ungrateful, and untrue" to them.

Many of the patrons claimed that they had been unnecessarily "taxed to death," and that I was the cause of it. In support of their argument, they cited the fact that, in their school-days, they used split poles and rails for seats. They said that the school-buildings condemned by me were better than the homes of some of the tax-payers. In truth, against my policy of improvement came protests loud and long. Men are prone to revile that which benefits them most. The "back-number" teachers, who had failed to pass the examination for teachers' certificates, with their fathers, mothers, sisters, brothers, uncles, aunts, cousins and other relatives, and their friends, lined up in a solid phalanx against me. The dissatisfied and disappointed, who were many, pledged themselves to compass my defeat. Independence and self-reliance are the traits

that have brought me into collision with other men. They have made me ardently loved and ardently hated. Taking into consideration all the forces with which I had to contend, my nomination was a signal political victory. It was the only county office whose incumbent succeeded in being renominated. Four out of the five magistrates, who also attempted to be renominated, were defeated. It was a year of rotation in office.

Naturally I expected opposition in the final election, and on this I was not disappointed. Professor Lee Pope, who had recently been graduated at the state college, Kentucky, and who had carried off the highest honors of his class, was put forth by the Democrats and the dissatisfied Republicans to oppose me. Nevertheless, I won by a handsome majority.

After the election I found myself worn out by campaigns, overwork in office and school difficulties. At times before this when the worries of office had become particularly depressing, I had made it a habit to stroll into the woods, where it seemed the burden would be lifted, and I should be able to forget my worries. It is best always to live in eternal sunshine and let the clouds gather where they will. The sweetest hours of the infinitesimal space of time allowed each human being from the measureless eternity are those spent in the solitude of the forest, God's first temple, where one may feel a brotherhood with the trees, the birds, and the bees. But I am about to forget that the ideas of pleasure of no two men are the same, and that every one's conception of it changes from time to time. I now longed for college life again, and accordingly made arrangements with Judge John

H. Davis, of Barboursville, to stay in my office, and attend to all matters concerning the schools that did not demand official attention, sending me an account of all those matters to which I could attend at a distance. I took a post-graduate course in law at Center College, Kentucky, which I found to be a most profitable one. My brother, John L. Powers, was graduated in the same class. I longed to be a good lawyer, and during this term I learned and understood the law as I never had before. I had the good fortune to be under the direct tutorage of ex-Governor J. Proctor Knott, of Duluth fame, one of the brainiest men the state has ever produced. He was our principal instructor in law. His comprehensive and analytical mind, his ever-ready wit and humor, his profound and exhaustive information on so many branches of learning, his unusual clearness and force in imparting his ideas, and in explaining the doctrine he desired to propound, made him a master in a professor's chair; and, although he has held many public positions of honor and trust, calling for the utmost fidelity and efficiency, I doubt whether his success in any one of these was greater than in the position of college professor.

I had, I believe, the honor of being one of his favorite pupils. After recreation hour it was often my pleasure and privilege to walk with him to his home. In the talks which we had on these and other occasions, he encouraged me in my work, and it greatly gratified me to have encouragement from such a source. As it was the height of my ambition to make just such a lawyer as he, I made as thorough a study of my professor as my opportunities allowed, delving, as far as I could, into the secret of his success. In June, 1898,

after my post-graduation at Danville, I returned to my home at Barboursville to resume the duties of my office and to enter actively into the practice of my profession. I continued to read law closely and my clientage increased. It was, too, a relief to find that the school duties were less onerous. Not only had I become familiar with my duties as superintendent, but the educational outlook in the county was growing brighter every year. Locally I had developed into an active politician and political campaigner. I was much in evidence on the "raging stump" in the campaigns of '95, '96, '97 and '98. Incidentally, I was looking out for broader fields in which to achieve political success.

CHAPTER XI

THE KENTUCKY PROBLEM

Affairs in Kentucky in 1899 — The Goebel Election Law — Opinion of Henry Watterson — The effort of the Democrats to have the law declared constitutional — The outlook for Democratic success in the campaign of 1899

That the full force of the gubernatorial campaign of 1899 may be fully comprehended by those not conversant with the local situation, I shall briefly review the political state of affairs in Kentucky a few years prior to that date.

In 1895, for the first time in the history of the state, the Republican party elected a governor and the full state ticket by a plurality of eight thousand nine hundred and twelve. The Republican forces in the campaign which led to this victory were headed by William O'Connell Bradley, the most adroit and popular leader, perhaps, the Republicans ever had in Kentucky. Bradley had led the Republican hosts before. Responsibilities naturally gravitate to those willing and able to shoulder them. Power comes to those who can do things. The money question in the local campaign of '95 divided the Democratic party. General P. Watt Hardin was nominated for governor by the Democrats of the state on a sound-money platform; but, on his first joint debate with Bradley in Louisville, he was forced to take a position, and declared for free silver.

A free-silver man running upon a gold platform was a situation so unfortunate that it served, together with the persistent charge by the Republicans that the Democratic leaders had long mismanaged state affairs, to cause apathy and alienation in the rank and file of the Democracy. The result was the election of the entire Republican ticket.

That the Republican party should gain control and assume the management of state affairs was a bitter morsel in the mouth of Kentucky Democracy, which had, up to that time, represented Kentucky's aristocracy. The leaders of the free-silver wing of the party began to revolve in their fertile brains some plan to prevent such another "calamity" and "disgrace to the state," and incidentally, to pave the road to their own future political fortune. How often the selfish desire to govern is paraded as righteous zeal in the cause of oppressed humanity! The plan finally adopted, conceived to secure for themselves the loaves and fishes, culminated in the notorious election bill, adopted over the veto of Governor Bradley in 1898, known as the Goebel Election Law. It came by its name through the fact that Senator William Goebel — a Pennsylvanian by birth, but representing the county of Kenton in the Senate of Kentucky, the state of his adoption — presented the bill and was the master-spirit in forcing it through both branches of the Legislature. The Goebel bill originated in the Senate, and when it reached the House for consideration, there was strong opposition to its passage among Democratic members. A Democratic caucus was held, the party lash applied and the bill became a law, but not without much ill-feeling in the Democratic ranks.



WILLIAM GOEBEL

Governor Bradley said of the bill, in his veto: "Clothed with both judicial and ministerial functions, having no legislative attributes, it, nevertheless, stands out in bold relief, the creature of the Legislature beyond the control of the courts and juries, a supreme power of the state, and the absolute master of the people." Henry Watterson said of it, in the *Courier-Journal*: "Goebel follows out his own ambitions in desiring to become governor of Kentucky, and he sees, or thinks he sees, a ready chariot thither in the electoral bill that bears his name."

The Goebel Election Law seized the key to the election machinery throughout the state. It provided that three men, to be elected by the Democratic Legislature, were to compose the state board of election commissioners. It provided, also, that this board, as well as an election board in each county of the state, which the state board had the power to appoint and remove at its pleasure, should act in a dual capacity. In their ministerial capacity they tabulated the returns of the election and issued certificates thereon; and in their judicial capacity they sat as a court to pass upon the fairness and honesty of their former actions in declaring their friends elected. The new law further provided that the decision of the state election board should be final and conclusive, and, therefore, not subject to review by any other court, inferior or superior. The election commissioners were to be under no bond to discharge their duties honestly and justly. Consequently no civil suit for damages could be brought against them in their official capacity by any injured litigant. This bold measure failed to provide for any punishment to be inflicted upon the members of the board for what might

be found to be the grossest or most flagrant violation of their sworn duty. Under its provisions, they were therefore immune from criminal prosecution. Such is the gist of this famous election law.

At the bidding of Senator Goebel, the Legislature named Judge W. S. Pryor, Captain W. T. Ellis and C. B. Poyntz, all Democrats, as members of the state election board. This board appointed an election board in each county of the state, a majority of whose members were Democrats and likewise Goebel's friends. The various county boards in turn had the power to appoint and remove at their pleasure the precinct election officers in each voting precinct in every county in the state. Some of these were to be Republicans, but in all matters touching the suffrage of the citizen the Democrats had the deciding vote. Such a law, it is obvious, was nothing short of legalized brigandage. Under its plenary provisions for theft and wrong the schemes of cunning politicians began to evolve rapidly. The Honorable South Trimble, now a Democratic congressman from Kentucky, wrote to Ben Marshall, a fellow Democrat and a member of the Franklin County board of election commissioners, his idea of procedure in these words: "*Our county is all right, but city elections can not be won with a fair count. Incompetent, unreliable Republican judges will have to be appointed.*"

The Republicans realized the danger lurking in the new election law. The Democrats feared it was not constitutional; and in order to have that question settled and the law declared valid, if possible, while the court of appeals was Democratic, an agreed suit, styled Purnell vs. Mann, was filed in Judge James E. Can-

trill's court. This suit was between certain Democratic office-holders and the Democratic County Election Commissioners of Bourbon County. Judge Cantrill decided that the law was constitutional. The case finally reached the court of appeals where, on a strict party vote of four to three, the law was declared to be valid. The Republicans were downcast. The outlook for fairness in future elections was almost hopeless.

In the congressional election of 1898, the Republicans lost heavily, electing only two congressmen, whereas in 1896 they had elected five out of eleven. The election, however, passed off without excitement or friction, and the friends of the Goebel Election Law claimed complete exoneration of the charges made against it.

Mr. Goebel had become widely known by reason of the fierce opposition to the election law that bore his name. Strong men are often advertised more extensively by the denunciation of rabid enemies than by the praise of loving friends. This notoriety enhanced Senator Goebel's chances for the gubernatorial nomination; so he declared himself a candidate and entered actively into the campaign. General P. Watt Hardin and Captain W. J. Stone also entered the race.

The outlook for Democratic success in 1899 was flattering. Since '96 the state had swung back into the Democratic column, electing a Democratic clerk of the court of appeals by nearly twenty thousand plurality. This was a great reversal of the Republican victories of Bradley in 1895, and McKinley in 1896. The indications were that the state had swung back into Democratic ranks for years perhaps, and that the independent

Democrats, who had won the race for Bradley and carried the state for McKinley, had gone back to the "house of their fathers."

The three-cornered fight for the nomination for governor became intensely interesting. There were no joint debates between the aspirants for gubernatorial honors. They all declared for free silver, and each confined himself to questioning the record of the other as to his loyalty to the silver cause. It was finally decided to hold county and legislative district mass-meetings for the purpose of selecting delegates to the state convention. These mass-meetings were marked by factional fights and contesting delegations. However, delegates were eventually selected to assemble in state convention and, by ballot, as usual, select the party's standard-bearers, naming the candidates for all state offices.

CHAPTER XII

THE DEMOCRATIC MACHINE

The Democratic state convention at Music Hall, Louisville — Many contesting delegations — Excitement over the temporary chairman's decision — Bailiffs fail to preserve order — Election of Redwine as permanent chairman — Machine work — Stone proposes terms

The Democratic state convention was called to meet in Louisville, on the twenty-first of June. After the smoke of battle at the county conventions had cleared away, it was discovered that Hardin was in the lead, claiming about six hundred of the total one thousand and ninety-one delegates. Stone claimed three hundred and fifty, Goebel about three hundred. Major P. P. Johnston, chairman of the state central committee, who was opposed to Goebel, called the convention to order in Music Hall at the appointed time, and proceeded to conduct the preliminaries of the temporary organization.

The Stone-Goebel forces immediately nominated Judge D. B. Redwine, of Breathitt County, for permanent chairman of the convention, and the Hardin men named W. H. Sweeney, of Marion County, for the same position. Chairman Johnston ordered the call of the counties, and the balloting began.

Scarcely had the secretary begun the call of the counties before it was discovered that one of them had

sent a double delegation to the convention, each set of delegates claiming to be the legal and regularly constituted one. The chairman passed the irregularly represented county and, as the call of the counties was continued, there were found to be numerous other contesting delegations, all of which were passed by the chairman. A survey of the situation disclosed the fact that there were so many of these contesting delegations, and that the vote already tabulated was so close between Redwine and Sweeney, that the result would depend on the disposition made of the contests. Consequently, in the decision to be made by the temporary chairman rested the real excitement of the convention.

The chairman as a rule recognized as legal delegates those whose credentials were signed by local party authorities. Frantic and perspiring men made threatening and incendiary speeches against these rulings and, as they increased in number, the excitement became more intense, the crowd more boisterous and savage. The platform was often crowded with frantic men; anxiety was at fever heat; and hot words were frequently exchanged.

As the roll-call was nearing a close Redwine was slightly in the lead, and the Goebel-Stone men were shouting for a decision, when, suddenly, the Hardin men came to the front with a contest over the county of Kenton. This contest involved thirty-five delegates and the decision of the chairman regarding it would determine the fate of Redwine and Sweeney. The Goebel-Stone forces were furious, crying out that it was too late for a contest. The chairman then announced that he had been served with a notice of contest in this particular case and ruled that it was not

too late. This ruling caused the Goebel-Stone forces to lose no time in contesting many of the large counties that had instructed for Hardin. Among these were the counties of Harrison and Campbell.

After this the excitement grew still greater, with small prospect of abating. Mr. Johnston insisted that he, as temporary chairman of the convention, had a right to call to his assistance whatever peace officers he desired for the maintenance of order and the preservation of the public peace, and this, too, without the advice or direction of any organized body or the Louisville police. He accordingly appointed special bailiffs, who were soon present in large numbers in the convention hall, while the Goebel followers called in a large number of the Louisville police and riotous heelers from all over the city. Matters were looking squally, and, when the Kenton County case was reached, the storm burst. Many of the adherents of the three candidates mounted the platform and crowded around Chairman Johnston. The bailiffs endeavored vainly either to preserve order or to force into seats the crowd that gathered around the chairman. A personal difficulty arose between the bailiffs and some of the Goebel-Stone adherents, and for more than a quarter of an hour curses rent the air, blows resounded and noses bled. Finally, the chairman adjourned the convention for a night session.

The fate of the contestants was in the hands of the chairman. If he recognized the delegation from Kenton County as the legally constituted delegates, it would nominate Mr. Sweeney, Mr. Hardin's candidate, for permanent chairman. This, of course, would mean the appointment of Hardin sympathizers on the

committee on credentials, and they would, in all probability, seat a sufficient number of Hardin delegates to give him the nomination, provided a majority of the delegates in the convention lived long enough to make a nomination. One writer, in speaking of the effect upon the convention of a ruling by the chair adverse to the Goebel forces of Kentucky, said "that such decision would precipitate a riot there was not the slightest doubt. During the afternoon it had been felt in the air."

This catastrophe, however, did not occur, as Mr. Johnston announced that he would recognize the Goebel delegates from Kenton as the legal delegates. This ruling on the part of Johnston resulted in the election of Redwine, the Goebel-Stone candidate; and when once elected, he proved himself to be very much the chairman. He apparently desired the world to surrender on its knees. Parliamentary usages formed no part of his code. He was not there for the convention to direct, but to direct the convention. There was but one man he obeyed, but one man he served, and that man was William Goebel. Him he served with all the fidelity with which a slave serves his master.

Throughout the whole of the proceedings, the master-spirit of William Goebel dominated the convention. While other men lost their reason and permitted themselves to be carried away by the excitement of the hour, as by a whirlwind, William Goebel was as cool and dispassionate as an onlooker at a Sunday-school convention. It was he who dictated the members of the various committees and directed the work to be done by them. At his dictation the committee on resolutions indorsed, bodily, the Goebel Election

Law. He sent men to their knees in abandonment of their own wills. At his command the committee on credentials agreed to bunch the contested cases from the various counties and decide them without regard to the merit, or lack of merit, of any individual case. This was a bold stroke. The Hardin men were furious, but Goebel gave them no consideration. He had outgeneraled them, and now he laid his plans to make a cat's-paw of Captain Stone.

In the interim, the Hardin people were enthusiastically working up a mass meeting to protest against the rulings of "Czar" Redwine. The meeting was largely attended and Redwine was bitterly denounced, while at the same time the propriety of a bolt was freely discussed at the Hardin headquarters.

The fourth day of the convention came, and the committee on credentials was not yet ready to report. The Hardin men made the outcry that the committee had been out long enough, and a motion was offered that the convention take up the contests and determine them. The motion pended, and again pandemonium reigned. A number of the delegates began leaving the hall, but they were seized by those who desired them to remain, and forcibly detained. This impressed some with the idea that they were about to be arrested, which only added to their indignation. The Honorable Charles J. Bronston, of Lexington, mounted a seat and made a fiery speech. Amidst cheers and hisses, he declared to such as could hear him above the din, that he did not care to be heard by "the thugs and hoodlums from the slums of Louisville, who had surrounded the convention with brass 'knucks' and guns."

Finally, the committee on credentials completed its

arduous (?) labors, and reported. The Stone-Goebel combine gained, by that report, one hundred and fifty-nine votes over the vote that elected Redwine chairman. The committee had been slow to report, but it had performed well the duty assigned it, which was, in substance, the bringing into being of delegates to nominate Senator Goebel. In other words, nearly the entire gain scored by the committee's report was in straight Goebel delegates.

After this flagrant exhibition of machine-work, General Hardin made his way to the platform, while the most intense suspense hushed to silence the noisy convention. Speculation was rife as to what was about to occur. General Hardin slowly and deliberately mounted the platform, although his manner was marked by a certain degree of agitation as he stepped to the rostrum. He began his remarks by saying the interests of the Democratic party demanded that he speak. He then announced that he withdrew his name from the convention; that he was no longer a candidate for the office of governor of Kentucky. Men often cease to struggle when success is fairly within their grasp, but this can not be said of General Hardin. Wild shouts of approval and disapproval greeted his unexpected announcement, but the work of the convention proceeded and the balloting was soon begun.

Goebel developed startling strength and Stone's followers were immediately filled with consternation. It began to dawn upon them that the committee on credentials had, to use a slang phrase, "done the work for them." The Goebel men felt so confident the nomination was within their grasp that they threw obligations to the winds. People often throw their

friends overboard when, by doing so, they will insure their own success; and it is needless to say the game of politics often illustrates this. It was asserted at one time that a sufficient number of votes had actually been cast for Goebel to nominate him, but before these votes could be tabulated and the result announced, some of the counties had withdrawn their ballots from his support.

When Captain Stone fully realized the situation and recovered from the shock of it, he went at once to Goebel, who was sitting in a corner on the stage, and demanded that he immediately withdraw his name from the convention. "If you do not, I myself will withdraw at once and nominate General Hardin," exclaimed the outraged ex-Confederate. Goebel's lieutenants rushed to Captain Stone, while Hardin's henchmen rushed to the front of the stage, preparatory to giving a new impetus to the Hardin boom. Goebel's advisers implored him to accept Stone's terms and thus save himself from the loss of party platform, party organization, complete shipwreck and disaster. To their wild appeals for his safety Goebel listened unmoved. Then, rolling his large steel-gray eyes upon them, he calmly said:

"If they wish to nominate Hardin, let them nominate him. If they can stand it I can."

After Stone's threat to nominate Hardin, Goebel and Stone came together on the stage and held an animated conference — at least animated on the part of Stone. Stone arose from his seat, with the intention, it was supposed, of withdrawing from the race and placing the name of General Hardin in nomination.

"Wait a moment," said Goebel.

Then before Stone could proceed further, his friends gathered about him and advised him not to act precipitately. In the confusion of the moment the convention was adjourned.

CHAPTER XIII

THE CONVENTION DECIDES

Continuance of Democratic Convention at Music Hall—
Despair of delegates — Judge Redwine refuses to entertain a motion to adjourn — Goebel is nominated — Democratic ticket — Independent Democrats repudiate the ticket of the Music Hall Convention — Objections of Prohibitionists — Anti-Goebel movement goes on — Denunciation of the Goebel Election Law

Monday morning found Music Hall again well guarded by police. About seventy-five officers were scattered through the convention hall. These were henchmen of Goebel. The Hardin-Stone men had not agreed on whom they would nominate, but did agree, with a chorus of shouts, that the police should be removed from the convention hall. Chairman Redwine refused to entertain either a motion to this effect or an appeal from his decision.

At this point, the Hardin-Stone forces made a mad rush for the stage. A line of police checked them. Above the confusion Redwine's voice could be heard demanding that the secretary call the roll for the balloting for governor. The Hardin-Stone forces declared that this should not be done. "Give us," they shouted, "a vote upon our motion and upon our appeal."

The disorder continued so great that twelve hours of that day were occupied in taking two ballots. Nearly

every time an attempt was made to call the roll, the exasperated Hardin-Stone supporters would fill the hall with shouts and a pandemonium of hideous sounds. Occasionally the delegates forced the unwilling audience to submit to specimens of their vocal powers. *My Old Kentucky Home*, *There'll be a Hot Time in the Old Town To-night*, and *Hang Judge Redwine on a Sour Apple Tree*, to the tune of *John Brown's Body*, were among the favorites in their choice repertoire.

Finally, Judge Redwine decided he would clear the galleries and lobbies and disperse those who, with horns and tin whistles, alternated a bedlam of discordant noises with the voices of his boisterous tormentors. When he announced his intention, some one in the crowd cried:

"When you are ready to clear this floor, nominate your undertaker!"

This is a sample of the sentiment felt and expressed toward the chairman, and, although he hailed from the county of "Bloody Breathitt," and his name was really "Red wine," his purpose to clear the lobbies and galleries was not carried out. Having abandoned all hope for even the semblance of fair play, the Stone-Hardin men practically decided that they would make an effort to adjourn the convention to Lexington, or to adjourn it *sine die*, without making a nomination. Delegates were becoming discouraged and worn out and some were returning to their homes. The action of the convention had been in so many ways notorious, such bitter feelings had been engendered, and so much dissatisfaction caused, that it was thought best not to make a nomination at that time. Accordingly, when the convention met next day, a motion was

made to adjourn it *sine die*, and to instruct the state executive committee to issue a call for another convention.

Both Captain Stone and General Hardin, in speeches to the delegates, urged the adoption of this motion. Here was another crisis. If the delegates were permitted to vote on this motion, there was not the slightest doubt the turbulent convention would be adjourned. It was now necessary, therefore, for the chairman to exhibit more cool nerve than he had shown before, and to proceed with even less regard for the formalities of parliamentary usage. But Judge Redwine was equal to the occasion; he was one chairman in ten thousand. He arose, or descended, as the exigencies of the moment might require, to any plane of dictatorial despotism. He now emphatically declared that he "would not entertain any motion, the object of which was to strike at the foundation of the convention's existence."

The Hardin-Stone men tried in vain to appeal from the decision of the chair. The chairman ruled that such a motion was very much out of order and forthwith ordered that the balloting proceed.

It did proceed, and after lasting six long, stormy, anxious days — days fraught with excitement and danger — the convention finally nominated Mr. Goebel on the twenty-fifth ballot, and the struggle at last was ended.

Goebel's speech of acceptance was characteristic of the man. It was neither honeycombed with flattery nor laden with sentiment of any kind. He virtually told those who had opposed him that he had defeated them in the struggle, and that it was now their duty as good

Democrats to assist in electing him governor. At the conclusion of his short speech, Goebel retired from the convention hall, leaving the love-feast to those who might enjoy it.

The affair, as a whole, could scarcely be called a brilliant success. On the next and final day of the convention, candidates for the minor state offices were nominated, almost entirely at the dictation of Mr. Goebel. They were: Mr. J. C. W. Beckham, of Nelson County, for lieutenant-governor; Judge Robert J. Breckinridge, of Boyle County, for attorney-general; Mr. Gus G. Coulter, of Graves County, for auditor of public accounts; Mr. S. W. Haager, of Boyd County, for treasurer; Mr. C. Breck Hill, of Clark County, for secretary of state; Mr. H. V. McChesney, of Livingston County, for superintendent of public instruction; Mr. I. B. Nall, of Louisville, for commissioner of agriculture.

So rapidly, fiercely and tumultuously do events follow one another here in our American Republic that they upset the calculations of politicians, and change, almost in the twinkling of an eye, the chances of success for political parties. The popular things and paramount issues of to-day are repudiated tomorrow, and this, too, without a moment's warning. The glittering prospect of success in the political arena is turned into dismal defeat with similar celerity. Following the nomination of Mr. Goebel were many difficulties in the way of his success, numerous charges of more or less gravity of import were brought against him, and among these was one that he had killed his man. John Sanford, of Covington, Kentucky, was the victim. He was an ex-Confederate soldier, a promi-

nent banker and a gentleman of high social and business standing. On account of the killing of Sanford, nine-tenths of the ex-Confederates of the state declared they would not support Goebel.

It is true that it was said of his election law that it left "nothing to chance." It did not leave much; but the people are always the master when they choose to use the whip. When they will it, political machines are smashed into atoms. In this instance, the people were aroused. The methods of the Music Hall convention were vigorously assailed. The unseating of delegates, the packing of the hall with Louisville police and firemen, the arbitrary rulings of the partizan Redwine, were all loudly denounced by Democrats, both in public and private life. Many ministers over the state — in fact, the majority of them — in their sermons and private talks, moralized upon the Music Hall convention, its candidates and the probable consequences of their nomination.

An enthusiastic meeting of Democrats was soon held at Mt. Sterling, Kentucky, calling upon the Democracy of the state to repudiate the nominees of the Music Hall convention. Other meetings were held for a similar purpose, following in rapid succession in other parts of the state. The meeting at Bowling Green probably elicited more comment than any of the others. Theodore F. Hallam, of Covington, one of the most gifted men of the state, was the speaker of the occasion, and part of his speech was much commented on. He declared that he was a Democrat and held that there was much sacredness in the word "nominee."

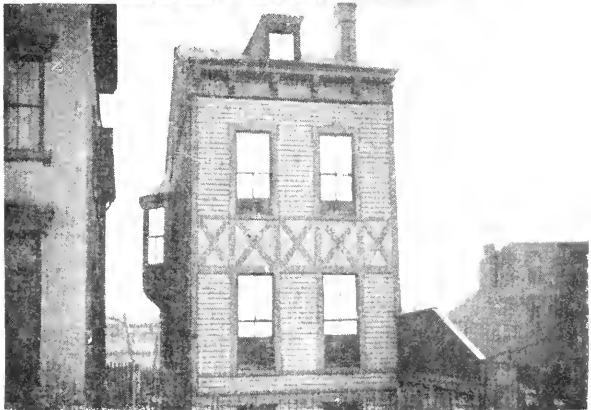
"I have always," he said, "stood ready to vote for a yellow dog if he was nominated on the Democratic

ticket. I stand ready and willing, to-day, to go that far, but lower you shall not drag me."

Personal difficulties were narrowly averted. It was early discovered that the brains of the Democratic party in the state were against the Goebel ticket. Such men as the late Colonel W. C. P. Breckinridge, General Basil W. Duke, ex-Governor Simon Bolivar Buckner, and men of that type, were known to be in opposition to the Goebel faction. Intolerance and tyranny compass their own ruin by driving from their support men who can not be coerced and who have the ability to think and the courage to act. Many of the rank and file of the party were willing to follow such men as Duke and Buckner. They had followed them before in the days of the country's peril.

The Prohibitionists of the state also took a bold stand, and said in their platform: "We demand the repeal of the odious Goebel Election Law." The Populists said in theirs: "We denounce the infamous Goebel Election Law and demand its repeal." The temperance people attacked Mr. Goebel and charged him with having defeated a local option bill, when he was the temporary presiding officer of the Kentucky Senate.

Thus the anti-Goebel movement grew in volume and intensity, and it was early decided to nominate another full Democratic state ticket. It was learned authoritatively that the late ex-Governor John Young Brown would accept the nomination for governor at the head of the anti-Goebel forces, and lead their fight. There was not a Democrat in the state who had been more loyal in his support of all Democratic men and measures than John Young Brown. In faithful and



Goebel's chair and correspondence

In Goebel's bedroom in Covington

His house

GOEBEL'S HOME IN COVINGTON

efficient performance of his duty, his record as governor of the state had been surpassed by none of his predecessors. His public and private life was without blemish, and besides these recommendations as a man and a candidate, he possessed that which is possibly of even more value in a campaign — the gift of oratory.

Bryan had cast his fortune in Kentucky with that of Goebel — an action which created a certain amount of depression among the anti-Goebel Democrats; but when Brown expressed a willingness to be their leader, a fresh impetus was given to their cause. On the sixth of August, the anti-Goebel men held their state convention at Lexington. The crowd was large and enthusiastic, and ex-Governor Brown was nominated by acclamation to lead the fight against the Goebel forces. He made a stirring and eloquent speech of acceptance.

“Are you ready,” he asked, “to bow down in abject submission? Are you ready to surrender your birth-right under the name of party regularity?” He said that the man who would tamper with the humblest citizen’s right to vote, or the man who would falsify that vote was “a public enemy, and worse than an assassin.” He declared “that the civilization of the age would approve, and the moral atmosphere of every community would be purified, if the scoundrel should be forced to don a felon’s stripes, and hold his conversations through barred doors.”

The other candidates nominated were: Major P. P. Johnston, of Fayette County, for lieutenant-governor; L. P. Tanner, of Daviess County, for attorney-general; Frank Pasteur, of Caldwell County, for auditor of public accounts; Captain E. L. Hines, of Warren

County, for secretary of state; Mr. John Droedger, of Kenton County, for treasurer; the Reverend E. O. Guerrant, of Jackson County, for superintendent of public instruction; and Mr. G. H. Van Derveer, of Lincoln County, for commissioner of agriculture.

The platform adopted was a very strong one. It denounced the Goebel Election Law in no uncertain terms; it declared that the Music Hall convention was "held up" by police, and robbed by Judge Redwine's unprecedented rulings, and that one-third of the Democrats of the state had been disfranchised.

CHAPTER XIV

THE REPUBLICAN CONVENTION

Race for nominations on the Republican ticket — State convention at Lexington — I am nominated for Secretary of State

Such were the events which, step by step, had led to this condition of Kentucky Democracy, and this was the situation in which that party found itself at the threshold of the famous campaign of 1899. As my fate was to be cast in lines similar to those of the Republican party, my own situation may be the better understood if the conditions confronting my party at this time are clearly in mind. I aspired to the Republican nomination for the office of secretary of state. I talked this matter over with many of my warm friends, but I did not indicate, as is usually the case, how I wished to be advised.

There is a strong desire, if not a necessity, in every soul to impart its joys and aspirations. I gave the matter serious thought myself, and, after weighing the advantages and disadvantages of such an undertaking, and not forgetting the possibilities of success or defeat, I decided to enter the contest for the nomination. Having determined upon my course, I decided to push my candidacy with vigor. One who enters politics with any reasonable hope of success must be willing to stake his all upon one throw of the dice.

The race for the nomination for governor waxed warm, and in that, as in every other similar contest, interest in the lower places on the state ticket was overshadowed by the all-absorbing contest for the gubernatorial nomination. The entries in the race were William S. Taylor, of Morgantown, Butler County, who had been the attorney-general of the state under Governor Bradley's administration; Colonel Samuel H. Stone, of Richmond, auditor of public accounts under the same administration; and Judge Clifton J. Pratt, of Hopkinsville, Christian County, a man successful as lawyer, politician and financier. There were five entries, including myself, for the office of secretary of state. As the various counties in the state soon called their conventions — they were held on different days — it was most agreeable to me to see that I, despite fierce opposition, was receiving more instructed votes than any of my opponents.

I arrived at Lexington to attend the state convention rather early in the action, opened headquarters at the Phoenix Hotel and worked with unflagging zeal to secure the nomination for the office I sought. I knew few of the party leaders, and consequently was placed at a great disadvantage; but my candidacy progressed admirably, and for a time I was on, or thought I was on, "the slate" for nomination, although it was strenuously denied by those in control of the convention that there was any slate. But who ever heard of a state convention where there was no slate?

The night before nominations were to be made, a change in the program occurred and it was decided by those supposed to be in authority that it would not be

good policy to nominate me, for, besides being unknown, I was "so young."

The nomination of W. S. Taylor for the governorship was almost a foregone conclusion from the very beginning. His record as attorney-general of the state was unimpeachable. Stone, however, had conducted the office of auditor of public accounts to the entire satisfaction of the public, while Pratt had been circuit judge for a number of years and had made an efficient officer. Taylor, however, seemed to have captured the public's favor, although the other candidates were men with clean and admirable records.

When Judge James Breathitt, chairman of the convention, announced that nominations for governor were in order, Colonel Stone and Judge Pratt withdrew their names from consideration of the convention, and W. S. Taylor was declared the Republican nominee for governor. The wildest enthusiasm prevailed when the action of the delegates was officially announced.

After the Honorable John Marshall, of Louisville, was nominated lieutenant-governor, the nomination for secretary of state was, according to the program decided on, next in order. The moments were filled with suspense for me. Senator W. J. Deboe, Kentucky's first Republican United States senator, at this time reputed to be the principal slate-maker of the convention, had just said to me that, unless I agreed to an adjournment of the convention until the afternoon, before the nomination for the office I sought was made, I would be defeated. I did not agree to the adjournment, because I believed a majority of the delegates then favored my nomination, and I feared to allow the politicians any time whatever wherein they

might lay plans to secure my defeat. It is just to Senator Deboe to say, however, that after a motion to adjourn the convention was put and lost, and after the various candidates for the nomination for secretary of state were placed in nomination, Senator Deboe and his friends heartily supported my candidacy. I hoped for success, but was prepared for defeat.

For two nights I had not sought rest until two o'clock in the morning, because I was working and planning for victory. I had done all I could do, and was anxious for the struggle to end and the results to become known. Uncertainty wears life threadbare. Many interested politicians were on the platform with me when my name was placed before the convention. The broad amphitheater in front of us was packed with an excited mass of humanity, composed largely of young men who were the hope and promise of what had only recently assumed the proportions of a great political party in Kentucky, while to the rear of the stage, the telegraph wires were flashing the proceedings of the convention to all parts of an anxious and expectant state. To me, very naturally, the seconds were charged with intense interest and suspense.

Before the votes of the various counties had all been announced, it was evident that I had received a majority of all the ballots in the power of the convention to cast, and my nomination was, of course, assured. My heart throbbed with joy. The struggles of my life were now rewarded; my ambitions vaulted skyward. After nominating the Reverend John S. Sweeney, of Paris, Bourbon County, for auditor of public accounts; Walter R. Day, of Breathitt County, for state treasurer; Professor John Burke, of Newport, Camp-

bell County, for superintendent of public instruction, and John W. Throckmorton, of Lexington, Fayette County, for commissioner of agriculture, the convention adjourned. It had been harmonious throughout and was in striking contrast to the turbulent affair held in Music Hall.

CHAPTER XV

MR. BRYAN VISITS KENTUCKY

Goebel opens his campaign at Mayfield—His reluctance to mix with people—Republican campaign begins at London—Opening of anti-Goebel campaign at Bowling Green—Goebel refuses to take part in joint debate—Mr. Bryan on the stump for Goebel—Louisville election board removes election officers

Goebel formally opened his campaign at Mayfield, Graves County, August twelfth. Those who had predicted that he would meet with a chilling reception and then and there realize the hopelessness of his cause proved to be false prophets. The crowd was there, there can be no doubt of that; but, as has been said of it, "it was rather a cold and curious crowd," and Goebel added nothing whatever to its enthusiasm, even when the time came for him to address it. In marked contrast to Blackburn, he had but little to say, and what he said and his manner of saying it were cold. Great men do not affiliate freely with others, but dwell apart from their fellows, and Goebel, in some respects, was a great man—great in intellect, great in energy, great in will. But, he was not a good "mixer," for he possessed neither personal magnetism nor personal attraction. He never condescended to personal familiarity or personal intimacy. He did not achieve success in the political arena in what may be termed a pop-

ular manner. He neither passed pleasantries nor recounted jokes. He disliked hand-shaking as a business, and only submitted to it when it could not be avoided. He was a political strategist, a schemer, a planner. He had fought life's battle, beginning in the ranks of poverty. He was bold, daring, self-reliant, a lawyer of ability, and so confident of his own opinions that his advisers usually became, in the end, instead of his counselors, the creatures of his dominating will. That he must now come in personal contact with the voters was uncongenial for Goebel and it is small wonder that he was not more successful.

When he made his first speech at the launching of his political ship, he spoke about thirty minutes, and then fell over suddenly as if dead. The severe heat of the day had prostrated him and he was unable to resume speaking until some time had elapsed. The superstitious — and they are always to be found — considered this a bad omen for Goebel and his ticket. Senator J. C. S. Blackburn followed Mr. Goebel in a characteristic speech. "If political thievery is to continue in Kentucky, in spite of the Goebel Election Law," he said, "I am willing to swear that the other fellows will not do the stealing."

The Republicans opened their campaign at London, on August twenty-second. Taylor is a gifted and warm-mannered speaker, and was greeted with enthusiasm. "When," said he, "a law fails to provide against any inequalities and wrongs, it is equivalent to a direction to do wrong. To make possible is to license. The Goebel followers propose to rob us of our suffrage in this campaign if we will permit it. Every election board in each of the one hundred and

nineteen counties in the state is packed with a majority of Goebel partizans. Even where Republicans have been named as precinct election officers, in many cases, they are old, infirm and wholly incompetent to act. And we are told, with solemnity, that the decisions of the various election boards are final and conclusive — too sacred to be touched by human hands. It is not a question of parties, it is not a question of men, but it is a question whether we shall longer exist as a free people.” He spoke with angry vehemence, his long, shaggy, black hair waving in the wind, his bony fingers clenched in emphasis.

Four days after the Republicans had opened the campaign at London, the anti-Goebel Democrats opened theirs at Bowling Green. Ex-Governor Brown made a stirring address. After Mr. Brown had received the nomination for the governorship, at Lexington, Goebel and his followers made him the special object of their acrimony. Ex-Governor Brown in turn now trained his batteries upon them, and, in his usual vigorous style, delivered some telling blows.

The campaign waxed warmer and warmer, if it is not doing violence to the word to call it a campaign. It danced on the ragged edge of a vendetta. Charges and countercharges were made. Denunciation, recriminations, threats and violence marked every step of the belligerent crowds. The whole state was a hotbed of strife and hatred. Even to this day the passions and prejudices of the forces that lined up on either side of this controversy have by no means vanished.

Early in the campaign, Goebel’s henchmen saw that the breach was too wide for them to think of inducing



COLONEL "JACK" CHINN, WHO WAS WITH GOEBEL WHEN THE
LATTER WAS SHOT

the anti-Goebel men to join their ranks by persuasive methods, so they sought to force them. Goebel himself became more and more bitter in his denunciation of those Democrats who opposed his election. In his speech at Bowling Green, shortly after ex-Governor Brown had opened his canvass, he said, in speaking of those who opposed him: "I ask no quarter, and I fear no foe." At the same time he spared none, and, in fact, he singled out and attacked each and every man of political standing among his opponents. The shaft he aimed at Major W. C. Owens was that Owens disliked him because he had used his influence against faro-banks and other gambling devices and resorts, which had "interfered with Owens' regular business, so, of course, he does not like it." He charged Theodore Hallam with having a brother in the penitentiary, while his followers castigated the late Colonel W. C. P. Breckinridge and ex-Governor Simon Bolivar Buckner unmercifully. As we know the fruitful apple-tree by the number of stones at its roots and by the number of sticks thrown into its branches, so we know the caliber of men by the way they are traduced and denounced. The man who amounts to anything — who is anybody — expects to be criticized and vilified. All great men understand this; it is as certainly one of the penalties of greatness, as it is a proof of greatness, to be able to endure these attacks without resentment.

The Brown spellbinders made much capital out of the fact that Goebel had refused to meet their champion in joint debate, while those whom Mr. Goebel had attacked in a personal manner responded in language equally severe. Major Owens said that he opposed Goebel, not for the reason given by him, but

because Goebel had violated three Christian precepts — *Thou shalt not lie, Thou shalt not steal, Thou shalt not kill*. Mr. Hallam denied the charge of having a brother in the penitentiary and added that while Mr. Goebel had no brother in the penitentiary, “his brothers have a brother who ought to be there.”

When excitement and bad feeling had grown to such proportions that it was obviously impossible to assuage them, Mr. Bryan was induced by Mr. Goebel to come to Kentucky. It was hoped that the Nebraskan's appearance would at least turn the tide, if it did not, in fact, allay the passions entirely.

The Goebel supporters were in high feather when Bryan's tour of the state was ended, and he had departed for a similar journey through Ohio. The famous Democratic national leader left behind in Kentucky the most roseate visions of an harmonious Democracy marching to victory. But these were only visions. The Brown contingent, like Banquo's ghost, would not down, even at the bidding of Mr. Bryan. It was made of sturdy stuff. It represented the brain and character of the Democratic party in Kentucky, and the men composing it refused to be driven. It is easy to arouse the feelings of the rabid and mystify the minds of the ignorant, but to carry the man of calm and sober thought off his feet is a difficult matter.

The last week of the campaign was replete with stirring events. No candidate felt that his election was a certainty, and each one stubbornly continued the fight until the polls were closed on the evening of election day. Goebel confined his canvass of the last week principally to Louisville. The Republicans had special trains flying over the state, on which were

Governor Bradley and other prominent men of the party, who made speeches at every station, while Mr. Taylor and others did similar work. Bradley said, in speaking of the theft of the ballot: "Yes, I would rather steal the last crumb from a hungry beggar, mean and despicable as that would be, than rob my fellow citizen of his vote." George Denny, a Republican orator of no mean ability, said: "The man who casts out a legal ballot is a traitor to his country and, in the language of Patrick Henry, 'Give me liberty or give me death.' If this is incendiary," he continued, "I say, make the most of it."

Late in the afternoon of the day before the election, the Louisville election board unceremoniously threw out eighty-seven Republican election officers, and filled their places with men who could be relied upon to meet the emergencies of the occasion. This changed the personnel of half the voting precincts in the city. The appointment of the extra police, the refusal of the election board to allow the Brown organization and the Populist and the Prohibition inspectors at the polls, the wholesale removal of the Republican precinct election officers less than eighteen hours before the polls were opened, were the "culmination of infamy," as the Republicans expressed it, and were merely fore-runners of the next day's proceedings.

The news of the removal of the Republican precinct officers spread over the city like wildfire. Men became drunk with passion. The wires of the telephone and telegraph were hot with the outrageous news, and alarm and terror swept swiftly over the entire state. Enraged and outraged men walked the streets of Louisville, torn with conflicting emotions. The great crowd

vacillated between violence and submission for more than an hour. The excitement was so intense that Governor Bradley canceled his appointment to speak in the city that night, but both Goebel and Blackburn addressed immense crowds.

CHAPTER XVI

ELECTION DAY IN KENTUCKY IN 1899

Election day — “Repeaters’ paradise” — Assembling of military — Republicans win by a safe plurality — Democrats claim election — Election board renders decision in favor of Republicans

The early morning of election day saw thousands of voters on their way to the polls — some to be allowed the exercise of their sacred rights as citizens, while others were to be denied theirs. In Lexington and other cities the most stupendous corruption prevailed. In Louisville, in some precincts, the voting places were removed. In others the voting did not begin until late in the day; in many it did not begin at all, it is said, until plans had been matured to sink the ballot-boxes in the Ohio River after the polls had been closed; and in still others ballot-boxes were heavily “padded” before the voting began. Louisville was overrun with “repeaters” from other cities, and proved in truth on this day to be the repeaters’ paradise; for they were protected by policemen, firemen, thugs and bullies. In droves the “phony” voters were chaperoned throughout the day from one voting-place to another, and gave the names and cast the votes of actual or supposed residents of the city, while officers of the law, whose duty it was to protect the ballot, bade them God-speed.

By order of Governor Bradley, the military had been assembled in the armory in anticipation of trouble, but was not called out until three hours after the polls had been closed. Three companies then left the armory and visited only eight of the polling places where trouble had been reported. Fraud and corruption ran riot at a majority of the voting precincts throughout the entire city. In spite of all this the opposition to the Goebel ticket was so overwhelming that it was learned early in the night that the Republicans had carried Louisville by a majority of nearly twenty-five hundred, and, before morning dawned, the Republicans knew that Taylor and his ticket had won by a safe plurality, although at the Goebel headquarters the state was claimed for the Goebel forces. Had not the Goebel followers and those operating under the Goebel Election Law underestimated the magnitude of the opposition to the Goebel ticket, the result might have been written in different figures.

On Wednesday, when Taylor reached Louisville, he gave to the country a signed statement, in which he said he had been elected in spite of the disfranchisement of twenty-five thousand voters favorable to him; and that the trust which the people had confided to him would be assumed and maintained. When Goebel reached his headquarters at Frankfort from Covington, where he had spent election day, his followers and adherents were panic-stricken. A crowd of his supporters met him at the train and followed him to the Capital Hotel, where they induced him to make a speech from its steps. They were anxious to know what he had to say about the election. His words were worth more to them and they placed

more confidence in them than in any returns they might receive.

Goebel was more excited than his worshiping followers had ever seen him. When the crowd cheered him madly as the governor-elect, he said, with passionate emphasis: "I have been honestly elected governor of Kentucky. . . . Mr. Taylor says in an interview, that he will *assume* the office and *maintain* it. All that I have to say is that, if declared elected, I will *occupy* the office."

J. Willard Mitchell, a leading Democratic politician, who was recently a candidate for the office of attorney-general, followed Goebel in an incendiary speech.

When the results of the election were more fully known it was clear that the Legislature would be strongly Democratic, but that Taylor and his ticket had won on the face of the returns by over three thousand votes. This was a signal victory for the Republicans when the fact is considered that Kentucky is a Democratic state; and that the Republicans were handicapped by the notorious Goebel Election Law, which, it is not difficult to understand, placed the entire election machinery of the whole state in the hands of the Democrats. While the Republicans were congratulating themselves upon their victory, their joy was mingled with dread and doubt, for they realized that this election law might still be the cause of ruin and confusion. Its dangerous possibilities had not yet been taxed to their utmost. It had latent powers that might still be used with crushing effect.

These fears were not without foundation, for the Democrats soon announced that both state and county election boards had the right to pass upon the

legality of the ballots, even before a contest was instituted, as well as to tabulate the returns of the election. They contended further that in several counties which had given large Republican majorities, the ballots were so thin as to be transparent, and that the voters in the city of Louisville had been intimidated on election day by the presence of the military in that city and that, therefore, none of the votes was valid, but on the contrary, all were null and void, and should not be and would not be counted.

The Republicans, on the other hand, maintained that these charges were hollow subterfuges and the emptiest of pretenses, resorted to by desperate and defeated office-seekers for the purpose of reversing the will of the people as expressed at the polls. They pointed out that the military remained in the armory at Louisville until three hours after the polls had been closed on election day, that no one raised any objection to the ballot on the day of the election, and that "thin" ballots were confessedly an afterthought. The claim on the part of the Democrats that the election boards had the power to throw out, when acting in their clerical capacity, any votes they might desire to cancel was bitterly denounced and denied. The Republicans and anti-Goebel Democrats loudly censured the election law, which gave being to the state board of election commissioners and clothed that body with supreme power, but gave the citizen, who knew himself to be defrauded, no means of redress. It will be remembered that the election law declared that the decision of the board should be final and conclusive.

Three men in the state, according to this provision, held the liberties of the people within the hollow of

their hands. They had the power to declare at will that the defeated had been elected or the elected had been defeated; and this law, which gave the state election board such unbridled authority over the rights of Kentuckians, had been declared constitutional by the Democratic majority of the court of appeals. What relief, then, had the people? They could only remonstrate; and this they proceeded to do vigorously. Mass meetings were called and strong pleas were made that the county and state election boards heed the voice of the voters as expressed at the polls. Finally, after much excitement, further delay and the institution of several suits, all the county boards were compelled to tabulate the returns of the election in the various counties, and certify this vote to the secretary of state. These certified returns from all the counties gave the entire Republican ticket a plurality of all the votes cast; but, despite this fact, it was repeatedly and freely asserted that the state election board would ignore enough legitimate Republican votes to give the Goebel ticket an illegitimate plurality, and would issue to it certificates of election. This report brought crowds of people to Frankfort, many coming from the mountains of Kentucky to be present when the state election board should meet to tabulate the election returns.

When it rendered its decision, contrary to the expectation of many, two of its members, Messrs. Pryor and Ellis, handed down a majority opinion (Mr. Poyntz dissenting) in favor of the Republicans and gave the certificate of election to Taylor and the entire Republican ticket. They had tabulated the returns of the various county boards without change or amend-

ment, and certified to the result as they had found it. As can be easily imagined, this was a severe blow and disappointment to Goebel and his ticket, for the election officers throughout the state, the majority of the members of county boards and all the members of the state election board, were men of their own selection. They decided that more votes had been cast for Taylor and his ticket than for Goebel and his; but in spite of this fact, contests for the various offices from the governorship down were soon instituted by the Democrats. Goebel had appealed from his own election boards to his own Legislature; and plans were laid to throw out fifty thousand Republican votes, or more, alleging military intimidation, thin ballots and the like. The Republican officers-elect, however, were regularly inducted into office.

CHAPTER XVII

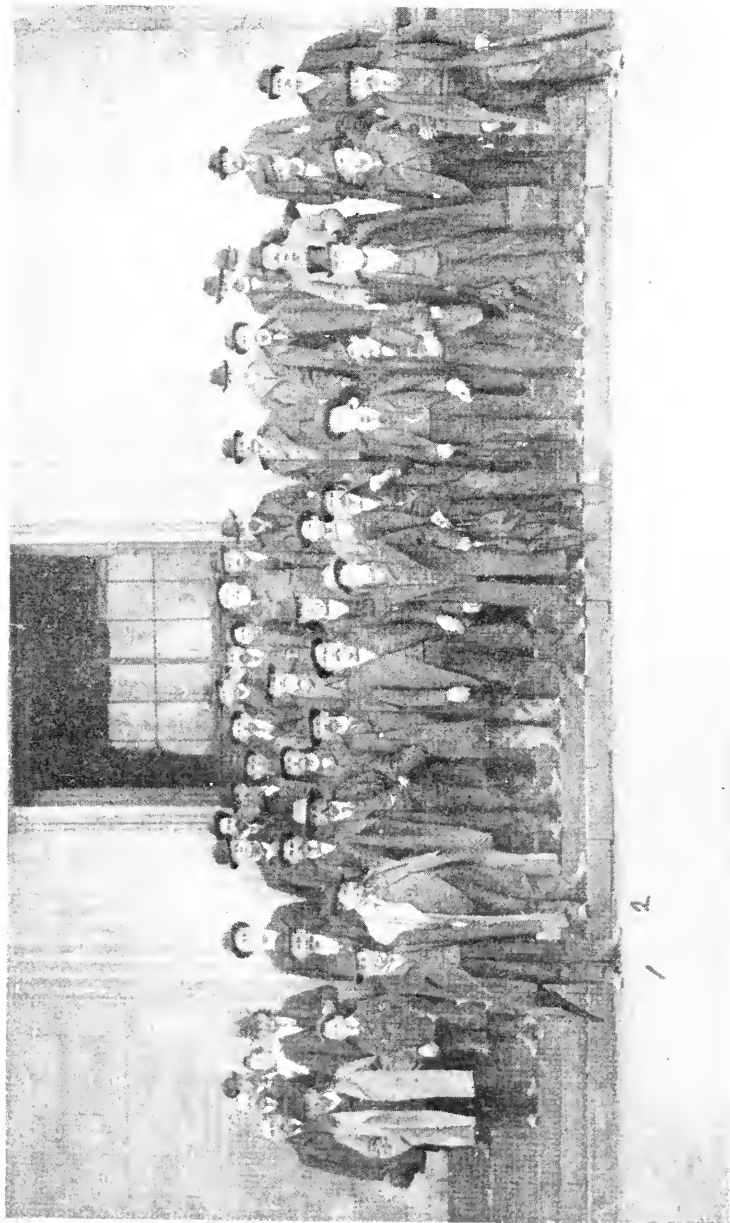
THE REPUBLICANS STAND FIRM

Goebel contests decision of election board — Democratic caucus — Evidence of Mr. Harrel — Inauguration of Taylor — Rules of Contest Committee

Soon after Judge Pryor and Captain Ellis had given the certificate of election to the Republicans, they resigned their positions as members of the state board of election commissioners. Their action was significant. It is said they did not feel they could afford to soil their records by disfranchising their fellow countrymen, even acting in their judicial capacity.

Before entering upon the contest, Mr. Goebel had the Democratic state central committee called in session to indorse the step. The determination on the part of Mr. Goebel to take his contest before the Legislature as a party contest was a shrewd diplomatic move. His cause by this action and by the indorsement of the state central committee would then become the party's cause — his success or failure the success or failure of his party. When the contest became a party measure it relieved him then and there of much responsibility, and gave to his contest at the same time an immense amount of influence and strength of which it would otherwise have been divested. He proposed, in short, to place the party upon the firing line, and force it to bear the brunt.

A few days after the resignation of his colleagues, Mr. Poyntz filled one of the vacancies on the election board by the appointment of Judge John A. Fulton, of Nelson County, and in a few days, Morton K. Yonts, of Muhlenberg County, was appointed the third member of the commission. Yonts is an uncompromising Democrat. Judge Fulton, prior to his appointment, had demonstrated his qualifications and fitness to serve. In a card given to the public, referring to the calling out of the militia at Louisville, he said: "What should be done with the vote of a city so dominated by unlawful force? It should unhesitatingly be rejected as a tainted thing." After saying publicly that the vote of Louisville should thus be disposed of, Judge Fulton was certainly well qualified, as far as partizanship and a previously expressed opinion could qualify him, to be a good member of this Goebelized state board of election commissioners. With such members on the board as Mr. Poyntz, who had already voted against giving certificates of election to the Republicans, and Judge Fulton, who had expressed his opinion so frankly, it may be readily understood that the prospects of the minor state officials to occupy the offices to which they had been elected were by no means flattering, whatever might be the majority by which they had been voted into office. But since the contest for the office of governor and lieutenant-governor had to be instituted in and decided by the general assembly, Goebel and Beckham were not so sure of victory as were the other contestants, whose rights to the offices were to be determined by Poyntz, Fulton and Yonts. As a matter of fact, some of the Democratic members



GOEBEL (FIG. 1) AND COLONEL "JACK" CHINN (FIG. 2) WITH MEMBERS
OF THE LEGISLATURE ON THE STATE HOUSE STEPS

of the general assembly were openly declaring that the Republicans had been legally elected and were entitled to the offices.

A Democratic caucus with the party lash well applied was, therefore, a necessity, and, when it was held on the night of January first, a drama was arranged which its managers thought would be sufficiently imposing and realistic to keep within the fold all faltering or weakening Democrats. It had its origin in the rumor that the Republicans would be sustained in their fight, if not installed in office, by the "filthy lucre" furnished by the Louisville and Nashville Railroad Company.

The opening scene of this drama was sensational in the extreme. The curtain arose displaying to a large and eager audience, composed of many senators and representatives, the actors in the first scene. Mr. Goebel called the caucus to order, whereupon Senator S. B. Harrel, of Russellville, Logan County, demanded recognition, which was readily granted. He then strode forward, clad in imaginary toga and buskins and dangling portentously two small keys. Interesting developments had been promised; the audience waited, hushed and expectant. The hero of the evening pierced the assembly with his sharp gaze and continued to dangle his keys. Figuratively, the footlights were burning blue and low, and the music was suitable as an accompaniment for the words of a dying Hamlet. In such an atmosphere, with all necessary accessories at hand, in one grand burst of patriotic ardor and self-congratulation that he was not like other men, Mr. Harrel began his lines:

"I wish to say to you that these keys unlock a

box in the Louisville Trust Company's vault, wherefrom, if I should have failed at this hour to come to this caucus and by my absence refused to rally to the support of my party, I might have taken four one-thousand-dollar-bills and five one-hundred-dollar-bills. But there is not enough money in this land to bribe, muzzle or intimidate me."

When his outburst of eloquence had been sufficiently stripped of its florid language and melodramatic dress to permit an understanding of it by the ordinary mind, Mr. Harrel said in substance that John Whallen of Louisville, a strong anti-Goebel man and withal one of the shrewdest politicians either the city of Louisville or the state of Kentucky ever produced, had offered him forty-five hundred dollars to remain out of the Democratic caucus and vote against Senator Goebel in the contest for the governorship. Mr. Whallen, he said, had approached him after the election with this proposition. With a view to trapping Mr. Whallen and the opposition, Mr. Harrel asserted, he went to Louisville, met Mr. Whallen, agreed to take the forty-five hundred dollars, remain out of the Democratic caucus, and vote against Senator Goebel in the contest for the governorship. Mr. Harrel said that Mr. Whallen and himself held keys to the deposit box wherein the money had been placed. The whole sum was to come into his possession, he said, when he complied with his part of the contract.

All this Mr. Harrel placed before his audience in the most dramatic manner and the most impressive language. Later he was escorted to the office of Squire George B. Thompson, before whom he swore out a warrant against Mr. Whallen, charging him with an

attempt at bribery. In a short time, that convenient body, the Franklin County grand jury, indicted Mr. Whallen and a Mr. Ryan on the information supplied by Mr. Harrel. However, it seemed that it was finally agreed by the members of the Democratic general assembly that even Judge James E. Cantrill's court, with all its modern conveniences, could not do full justice to an anti-Goebel Democrat who was charged with attempting to bribe a member of its own immaculate body. It proceeded, therefore, to open the gates of the slaughter-house for Mr. Whallen's reception by offering a resolution providing for his trial by a committee of its own members. After these stage-plays had served their political purpose, the attempt to prosecute Mr. Whallen and Mr. Ryan was abandoned. But the weak ones of the general assembly were driven into line by the fear of their future political prospects if they proved recalcitrant, while the honest ones feared that, should they vote for Taylor and their convictions, they would be considered dishonest.

Taylor and Marshall, however, were duly inaugurated governor and lieutenant-governor of the Commonwealth on the twelfth day of December, each taking the oath of office before Judge James H. Hazelrigg, a Democrat, then chief of the court of appeals. On the first day of January, the minor state officers-elect assumed the duties of the offices to which they had been elected. I was still holding the position of superintendent of public schools of Knox County, but resigned that office (my brother, John L. Powers, was appointed to fill the vacancy) for the purpose of taking charge of the office of secretary of state. I took the oath of office before Henry E. Youtsey, who happened

to be the most convenient notary public. This was the first time I had ever seen Henry E. Youtsey, whom I shall have occasion to mention later.

Meanwhile, the faint and flickering hope of the minor state officers-elect was being slowly extinguished, and the chances of holding the offices of governor and lieutenant-governor were also gradually diminishing. The Goebel law provided that all election contests for the office of governor and the office of lieutenant-governor should each be tried by a committee of three senators and eight representatives. The committees were to be drawn by lot and were required to report their decisions to the Legislature for final judgment. The framers of the Goebel Law had been afraid to refer any contest to the decision of any committee drawn by lot; so, as a further safeguard against uncertainty, they declared that the decision, in any contested election case, should be subject to the approval of the Legislature before becoming final.

On the third of January, the drawing of the names of three senators and eight representatives to compose a committee to try the contest for governor was held. No sleight-of-hand performance ever equaled it. No one was permitted to supervise the drawings; the speaker ruled out of order a motion to that end. The result was that of the eleven members chosen to try the contest, eight from the House and two from the Senate were Goebel Democrats. The committee drawn to decide the contest for lieutenant-governor consisted of nine Goebel Democrats and two Republicans.

The result obtained was most remarkable, especially when the relative strength of the two parties is considered. Including the two Populists and the four

anti-Goebel members, who voted with the Republicans, the Senate stood twenty Democrats to eighteen Republicans, while the House stood forty-two straight Republicans to fifty-eight Democrats, three of whom were said to be anti-Goebel in tendencies. A mathematical calculation shows that the drawing of eighteen Goebel Democrats to only three Republicans from the general assembly, constituted as it was politically, could occur only once in three hundred and fifty thousand times if conducted with fairness. The committees were well if not fairly selected. Their members soon provided a set of rules governing the hearing of the contest cases, to which even the most violent partizan could not object; and, under these regulations, forthwith they began the weighty work in hand, no doubt with a firm determination to give it their earnest, honest, and prayerful consideration. Each committee-man must have remembered the oft-repeated epigram that "brevity is the soul of wit," and the old saw, as well, that "time is precious," for they adopted further rules of their own at the beginning of their deliberations, which provided for the holding of a joint trial of the contest for governor and lieutenant-governor.

CHAPTER XVIII

THE SHOOTING OF WILLIAM GOEBEL

Effort of Taylor's attorneys to remove Democratic members of contest committees — Suit to enjoin Taylor appointees from taking oath of office — Republicans seek to arouse the people — I bring the mountain people to Frankfort — Meeting on the steps of the Capitol — I go to Louisville for more petitioners — Goebel is shot — The excitement at Frankfort — The military is called out

The first step taken by the attorneys for Taylor and Marshall was a motion to remove the Democratic members of the two contest committees because of their extreme partizanship. The members of the contest committees treated the motion with contempt, and forthwith overruled it. The affidavits filed in support of the motion were likewise contemptuously ignored, while other affidavits of the contestees, asking that the committees retire because they had been fraudulently drawn, met with a similar fate. The affidavits exposed the shortcomings of the members of the committees individually. They charged five members with having attended the conference of Democrats that was held at the Capital Hotel, on December fourteenth, urging Senator Goebel to contest the election. They stated that another member of one of the committees had laid a wager on the result of the Goebel-Taylor election. They showed that the seat of one member

was being contested upon the same grounds, and gave facts that the contestees would present as their defense in the contest suit.

The committees held that there was no provision of the election law which required them to vacate their position on the grounds alleged, or *on any grounds that could be alleged*; and that they proposed to try the cases. And as proof of their determination, they proceeded with the hearing of the evidence.

The proceedings that followed were nothing short of mere mockeries. The well-established modes of taking testimony were disregarded; and the laws governing judicial tribunals in the hearing of cases were contemptuously ignored. The Republicans were permitted to introduce only a very small number of their witnesses, although others were present and ready to testify.

While these things were occurring in the contests for the offices of governor and lieutenant-governor, matters of much moment were taking place concerning the contests for the lower state offices. When Captain W. T. Ellis and Judge W. S. Pryor resigned from the state election board, Governor Taylor, maintaining he had the power as governor to do it, appointed Judges A. M. J. Cochran and W. H. McCoy to fill the vacancies.

The Poyntz board brought suit early in January, before Judge Cantrill's court at Frankfort, to enjoin these Taylor appointees from taking the oath of office, or exercising their duties as members of the state election board. Judge Cantrill granted the injunction of the Poyntz board against the Taylor appointees, and immediately, and upon his own motion, dissolved the

injunction. This was a very remarkable feat for a judge to perform.

If he had not dissolved the injunction which he had granted, the Republicans would have had, under the laws of Kentucky, the right, on appeal, to select the judge of the court of appeals before whom the case would be tried, and there were three Republican judges on the appellate bench at that time. By dissolving the injunction, Judge Cantrill gave the Poyntz board the right, on appeal, to name the member of the appellate court before whom its case would be tried, and it named Chief Justice James H. Hazelrigg, who called in the full court to hear the case.

The four Democratic judges of the court of appeals (the three Republican judges dissenting) decided that the contest board, composed of Messrs. Poyntz, Fulton and Yonts, was the legally constituted one.

Things now looked far from encouraging for the minor state officers, since this board had been declared valid by the highest court in the state, and since one of its members had already decided against the Republicans, and another had declared his intention to do so. It will be remembered that the decision of the board in the matter was to be final and conclusive, according to the provisions of the Goebel law.

Having little or no hope of justice from the contest board, and still less in the decisions of the Legislature and its contest committees, the Republican leaders sought to arouse the people of the state to the enormity of the wrongs about to be perpetrated. It was thought by some that a thorough exposé of the unlawful proceedings of the Democrats through the press, "the policemen of the nineteenth century,"

would do much to call a halt to their mad race for office. By others, of whom I was one, it was thought that mass meetings of the citizens of the state, at which strong resolutions could be passed and protests could be registered against the contemplated action of a few Democratic office-seekers and politicians, would assist, at least, in showing the widespread indignation and disapproval on the part of the people. Others thought that the gathering at Frankfort of the leading Republicans from all parts of the state would have a good effect on the contests. Others, again, thought that an openly stated purpose and a bold determination on the part of the Republicans to resist any unlawful attempt to eject them from their offices would help the cause; while not a few thought that, if large bodies of people from over the state could be brought to Frankfort to petition those in power, and remonstrate against their trampling under foot the most sacred rights of Kentucky freemen, the effect might be beneficial. The last course was adopted and I was assigned the duty of bringing some two thousand of the petitioners from the mountains of Kentucky. Others were assigned to other sections of the state. While these preparations were in progress the constitutional right to hold such a mass-meeting and to bear arms openly was not questioned. The Goebel side was heavily armed. Even members of the General Assembly almost staggered under the weight of weapons.

When the mountain people, about twelve hundred strong, reached Frankfort, they discovered that people from other sections of the state had failed to come, as contemplated. The Republican leaders, while I was

absent on my mission, had decided not to hold the mass-meeting, but the decision came too late for me to be notified of the change in plans, since I was in an inaccessible section of the state.

About eleven o'clock on the morning of their arrival the mountain people held a meeting on the State Capitol steps, adopted resolutions to present to the Legislature, and, having accomplished the mission for which they came, the majority returned to their homes on the afternoon of that same day.

The Goebel followers and Goebel press ascribed every dishonorable motive imaginable to the coming of the mountaineers to Frankfort. They called the crowd a "mountain army," that sought to settle a legal dispute by the use of the rifle; in short, my good intentions were misrepresented, while I myself was traduced and vilified. Many people believed then, and still believe, that mountaineers are born with bowie knives in their brains. But never before were the strained feelings that have long existed between the highlanders and lowlanders of the state, and the prejudices against the "mountaineers," as they are commonly called by their lowland brethren, so deftly played upon. Some persons found no epithets too vile to apply to the mountain people, nothing too low and despicable with which to compare them.

While these things were going on the proceedings in the contests for governor and lieutenant-governor were nearing an end, and it was practically certain that these contests would come up for a final vote the last of the week beginning January twenty-ninth. Between the hours of four and five o'clock on that day, Walter R. Day, the state treasurer, came to my

office, and we had a talk regarding the bringing to Frankfort of another crowd of men, mostly from western Kentucky, to petition the Legislature; and on the morning of Tuesday, the thirtieth, it was decided that such a crowd of petitioners should be brought to petition the Legislature before it took a final vote on these contests. In company with Mr. Day, George W. Long, ex-state treasurer, J. L. Butler, F. Wharton Golden, and my brother, John L. Powers, I made a trip to Louisville for this purpose.

As we were nearing Lagrange, a station on the Louisville and Nashville Railroad a few miles from the city of Louisville, news of the assassination of Senator Goebel flashed over the wires, and the story of an awful tragedy was told to a shocked and horrified people.

Even those most violently opposed to Mr. Goebel — those who had fought him with relentless determination — stood with bowed heads, their consciences revolting at the cowardly crime committed against him, against society, and against the peace and dignity of the state.

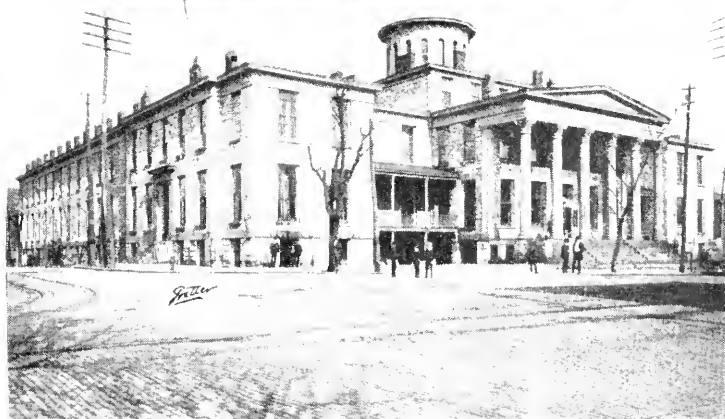
I had fought Goebel with the energy of my whole soul. He had led the movement to deprive me of the office to which I had been fairly and legally elected; but, when I heard that he had been killed in the State House yard, by an unknown marksman, from the *second or third story of the Executive Building*, I knew that every hope that had animated me, encouraged me in my fight for my rights, was blasted by the assassin's bullet. I said at the time: "It is a shame and an outrage, and has ruined our chances for winning the contests." Every drop of blood in my body rebelled at

the awful crime. An outbreak of some kind at Frankfort had been feared by the people of the whole state, but no one dreamed of assassination.

As far as the public knew, there were no eye-witnesses to the killing, and different theories were soon advanced as to the manner of Senator Goebel's taking-off. "Who fired the shot that killed Goebel?" was the inquiry of thousands on the day of the tragedy.

Over five years have passed away. In that time men have been indicted and convicted for alleged complicity in Goebel's murder, two men have been sentenced to be hanged for alleged complicity in the crime and another is serving a life-sentence in the penitentiary of Kentucky for the commission of the deed, while six others are out on bond awaiting trial. Twenty in all have been formally accused of complicity in the deed; hundreds have been informally accused. But Time, the unraveler of all mysteries, has been baffled thus far in bringing to light the guilty. The murderer has kept the secret of his guilt buried in his own heart. The twigs of the trees on Capitol Square have thus far whispered the dark story among themselves, and it has gone no farther. Yet the deed was committed on the Capitol Square of the state, in the center of the city of Frankfort, when the noonday sun was high in the heavens, and where interested citizens were gathered from nearly every town and county in the Commonwealth.

Soon after the shot was fired, excited men crowded the streets, swearing vengeance against Goebel's assassin—"Blow up the State house!" they cried,—while guards from the penitentiary and men from the local engine-houses rushed upon the scene, some



Mob in streets after the shooting

Soldiers guarding Capital Hotel
from legislature

Soldiers guarding Capital Theater
from legislature

Under the governor's windows

The Capital Hotel, Frankfort, Kentucky

SCENES IN FRANKFORT

with guns in their hands. It was the opinion of the Republicans that an effort would be made to mob the inmates of the Executive Building; so the local military company, which had been quartered at the arsenal since the November election, was immediately brought to the State House Square, where it was stationed on guard. The entire military force of the state was called out that day, and came pouring into Frankfort that afternoon and night. A short time after the military had taken charge of Capitol Square, no one was permitted to enter the grounds without a pass from the officer in charge.

Threats were made against all State officials, but particularly against the life of Taylor. For days, it is said, desperate men lay in wait for him; and the air was surcharged with gossip that, as soon as he again appeared upon the streets, his life would be taken, as the life of Goebel had been taken. The city was filled with armed Goebel partizans. Mob violence was imminent. The situation was balanced on the ragged edge of civil war. Frankfort was a veritable powder-house, liable to explode at any moment. From time to time, for several days, excited persons would rush on the State House Square to bring the news that a mob was forming, or preparing to form, and that it intended to kill all the Republican officials and take possession of the offices. Thus the anxious days, pregnant with danger, passed away.

CHAPTER XIX

MAKING POLITICAL CAPITAL

Demand for revenge—Governor Taylor convenes the Legislature at London—Democrats declare Goebel and Beckham elected and later falsify the records of the general assembly—A proclamation—Senator Goebel's death is announced, and Beckham takes the oath of office as governor

The indignation which followed the killing of Mr. Goebel swept over the state like a wild storm. Revenge filled the hearts of his followers; they were ready to go to almost any length in retaliation. The Democratic leaders took advantage of the popular sentiment that, if Senator Goebel was killed by a Republican, the entire Republican party should be held responsible, and that it was, by its guilt, unfit to be intrusted with the affairs of the state. They accordingly made an early and urgent appeal to the contest committees and contest boards to take speedy action. The contest committees held a hurried meeting. The Goebel majority adopted a report unseating Taylor and Marshall, and seating Goebel and Beckham.

The members of the committees were dumb, however, as to the grounds for the action, and equally silent as to what Republican votes had been rejected, or the reasons therefor. They had decided and that was all-sufficient. The Republicans fully realized

that, if the general assembly was permitted to meet on the next day, or indeed, at any time, while the excitement was at so high a pitch, it would unseat Governor Taylor and Lieutenant-governor Marshall. It was decided, therefore, to delay, if possible, the action of the Legislature, prevent it from seating Goebel and Beckham, and also avert the probability of trouble by having it assemble elsewhere. So Taylor adjourned it to meet at London, Kentucky, February sixth.

The next morning, however, the Democratic members of the general assembly, on their way to the legislative halls, marched through the State House grounds, between a line of state troops, only to be halted on the second floor, at the head of the stairs, by two soldiers with crossed bayonets. South Trimble, chairman of the joint session, then and there adjourned the general assembly to meet immediately at the City Hall, but the Taylor soldiers again prevented a meeting and, later, Chairman Trimble a second time adjourned the general assembly to meet subject to his call.

That night the Goebel leaders and the Goebel members of the general assembly issued a statement to the public in which they said there was no danger in Frankfort, except that arising from the presence of "hordes of armed mountain Republicans," whose presence in Frankfort was the "logical and inevitable" result, if not "the contemplated culmination," of the assassination of Senator Goebel, and that Taylor had called out the military "without cause." On that same night, at the Capital Hotel, they declared Goebel and Beckham elected. It has since been established by proof, however, that there never was a meeting of either house of the general assembly, joint or separate,

on that night, but that Senator Goebel was declared governor by passing around a paper to such members as could be found to sign it; and that most of those who did sign this paper, did so in Judge Pryor's room in small groups, and immediately withdrew. This paper announced that by the *decision* of the *general assembly*, in separate and joint session, William Goebel was governor of Kentucky. The journals of the House and Senate were "fixed" and made to state that Goebel and Beckham had been declared legally elected governor and lieutenant-governor of the state by a majority of the House and Senate, in separate and joint sessions in the "legislative halls."

As it was an established fact that the Goebel Legislature held neither joint nor separate session in the legislative halls, the Republicans were safe in declaring that the journals of the two houses had been made to speak and record an untruth. The Goebel partizans hoped that the statements in these journals would be declared beyond the power of the courts to question, which eventually proved to be true, thus giving the Democrats the offices without further controversy.

The proclamation declared further that no violence had been committed or attempted in the city of Frankfort, except that which had "resulted from, and been the act of, the bands of lawless men which Taylor had brought to the capital, and quartered in the Capitol and executive offices, *from the windows of which last-named building, on January thirtieth, 1900, an assassin fired, and mortally wounded William Goebel.*" They said further that Taylor had filled "*the capital of the state with reckless armed men, who had assassinated an honorable member of the general assembly.*"

So, on the day following the killing of Senator Goebel, the Democratic politicians, for their own political purpose, formulated these accusations against the Republicans, and, upon these identical charges, the Republicans have been called to answer in the criminal courts of Kentucky. They charged that Senator Goebel was assassinated by a member or members of a Republican conspiracy; that the bringing to Frankfort of the mountain people formed a part of the conspiracy; that some unknown mountaineer fired from a window in the Executive Building the shot that killed Goebel; and that the militia was called out "without cause," which was easily converted into "for the purpose of protecting the assassin and those implicated." Thus, from the brains of Democratic politicians, and out of political necessities, arose the criminal prosecutions which have disgraced the name of Kentucky, and to which I shall call attention later.

At six-forty o'clock on the evening of February third, 1900, it is said, William Goebel passed away without apparent pain. At seven o'clock, J. C. W. Beckham took the oath of office as governor, having been sworn in as acting governor about noon.

CHAPTER XX

AN APPEAL TO THE COURTS

Sorrow over the death of Senator Goebel — Governor Taylor rejects the Louisville "Peace Agreement" — General assembly reconvenes at Frankfort — Two legislative bodies and two sets of state officials

The announcement of Mr. Goebel's death under any circumstances and at any time would have been cause for deep and widespread grief among his many friends. That the light of his life went out at such a time and in such a manner caused many hearts deep sorrow and called forth from many pens eulogiums of the deceased leader. A lasting disgrace had come to the state. And while the Democratic headquarters at Frankfort particularly were shrouded in gloom, despair hung over the Republican camp as well. There may have been Republican leaders at Frankfort who did not regret that William Goebel was assassinated; but so far as I know, all deplored it. Some were incensed because of the cowardly act; others foresaw the irretrievable injury done the Republicans in the pending contest. While the people did not know who was responsible for Mr. Goebel's death, they did know that he had been assassinated on the State House Square; and that the state buildings were in the possession of the Republicans.

From this, many reasoned that the Republicans did

the deed; and that possibly many were implicated in it by reason of the circumstances surrounding the assassination. But, deeply as the Republican leaders deplored the tragic end of Mr. Goebel, they certainly felt in no way, as far as I know, responsible for his death. He had been fairly and honestly defeated at the polls, and was attempting to have himself declared governor of the state. It became the individual duty of every lover of liberty within the confines of the Commonwealth to oppose, with all his might, along legitimate lines, the efforts of Goebel and others in their work of trying to have themselves declared elected after they had been defeated. President Roosevelt, then governor of New York, took the view that it was not only the right, but the duty, of Republicans to hold the offices to which they had been elected. On February third, in commenting upon the Kentucky situation, Mr. Roosevelt said: "Mr. Taylor is governor by every principle of law and equity; and he and his followers, of course, should resist to the last extremity the reckless and unscrupulous conspirators who are endeavoring to do by violence after election what they failed to accomplish by the most scandalous frauds prior to and during election. The sole and individual responsibility of all bloodshed, past and to come, lies with the same conspirators, and with all that in any way abet them."

Monday, February fifth, found the Republican senators and representatives in London; while a number of the Democratic senators and representatives were in Louisville, with the intention of holding the real session of the Legislature in that place. Many of the leaders of both parties were also in Louisville, at the

Galt House, in pursuance of a previous understanding, trying to come to some agreement by which the intensity of the situation might be relieved and civil strife averted. An agreement was finally reached, known as the "peace agreement." The principal stipulation of the agreement was that the Republicans should be allowed the privilege of surrendering their offices, and get in return the promise of a fair election law. Taylor, after much hesitation, refused to sign the "peace agreement;" instead, he issued an order reconvening the Legislature at Frankfort.

When Monday, February nineteenth, came, it found the members of the two factions of the general assembly in their accustomed places. The feeling existing among them, however, was far from friendly. Lieutenant-governor Marshall and Senator L. H. Carter, the Democratic presiding officer of the Senate, were both present — and both claiming the right to preside over the Senate — both asserting that they intended to do so. When these two gentlemen met, they shook hands ostentatiously, each with the air of, "I am on hand and ready to preside." Each kept a watchful eye on the other; and when the moment came for convening the Senate, both began rapping for order simultaneously. It was not surprising that two succeeded in obtaining that for which, upon former occasions, one had been amply sufficient. The much-needed prayer was then offered; and the dual session of the Senate was begun.

Each presiding officer was recognized by members of his own party only; while the independent Democrats looked on tranquilly, at the prosperous (?) and thriving (?) condition of the Senate. Mr. Marshall

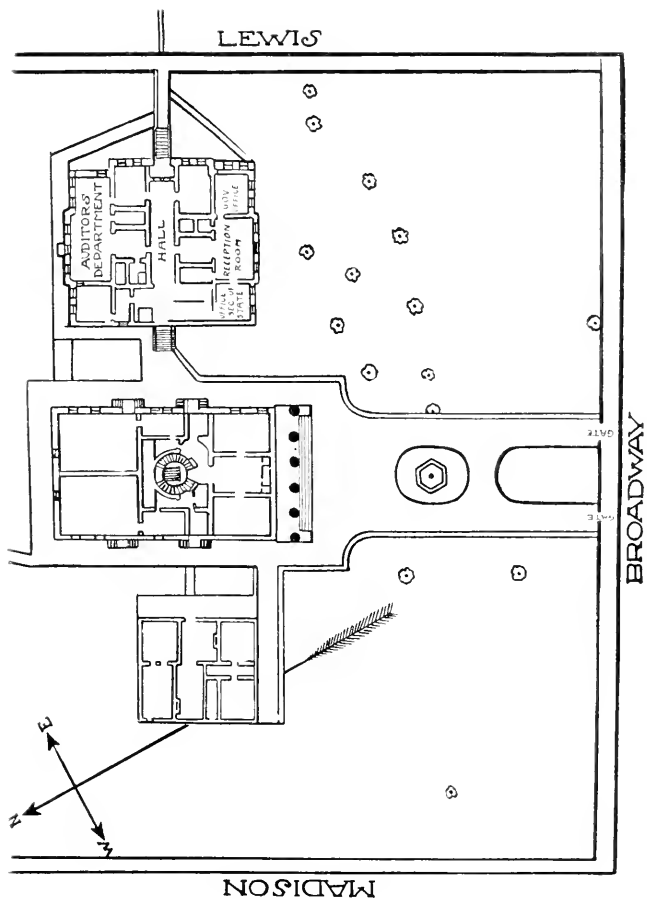
ordered the journal to be read. Mr. Carter instantly called for motions, petitions and resolutions. Each felt that he must keep in constant action in order to proclaim his authority. The clerk of the Senate was Democratic, so he began reading the proceedings of the Democrats at Louisville. To relieve the tension of the situation, a Republican senator made a motion to adjourn. Mr. Marshall put it; declared it carried; and formally adjourned the Senate, after making a request of the clerk to record him as its presiding officer. The Republicans then retired. The Democrats continued without adjournment and this line of conduct was adhered to throughout the entire session of the Senate. After the Republicans had retired on the first day of the double assembly, the Democrats reaffirmed, re-enacted and ratified the action of the meeting of the Democratic members held in the Capital Hotel, declaring Goebel governor and Beckham lieutenant-governor.

Just as there were two Legislatures attempting to serve in the capacity of the regularly elected lawmaking assembly of the state, there were two chief executives seeking to control the gubernatorial affairs of strife-ridden Kentucky. Taylor was still performing the duties of the office of governor in the Executive Building, while Beckham was attempting to perform a similar service in a room at the Capital Hotel in Frankfort. Taylor and his advisers took the position that the decision reached by certain members of the Legislature, at the Capital Hotel, depriving him of the governorship, was null and void.

There was, however, a grave contingency which might arise. Suppose the Democrats should institute

suit in Judge Cantrill's court, claiming that they had been adjudged the offices by the proper legal tribunal, and that the Republicans refused to vacate them? The Republicans would then be between Scylla and Charybdis. They would either be obliged to obey the mandate of the circuit court, or carry their case to the court of appeals, the majority of which was Democratic. Before either side knew what was being done by the other, conjectures were made without number. Each opponent prepared to enjoin the other before it might itself be enjoined. The Goebel adherents made hasty preparations to file their suit in the Franklin circuit court, where they had applied for and obtained relief upon former occasions. This court was their favorite resort, when the action of any court was needed to further their ends. Taylor filed his suit in the Jefferson circuit court. In two hours after Taylor had entered suit at Louisville, Beckham had filed a similar suit against Taylor in the friendly Franklin circuit court. The attorneys for both sides met and agreed to consolidate the cases, and have them tried in the Jefferson circuit court — the defeated party reserving the right, however, to carry the case to the court of appeals, and failing there, to the supreme court of the United States. It was agreed also that matters should remain *in statu quo* until a final decision was rendered by the supreme court of the United States, to which the defeated side was to submit.

It fell to the lot of Judge Emmett Field, of the common pleas division of the Jefferson circuit court, to try the case. In the meantime, the state board of election commissioners had rendered its decision, unseating all the Republican minor state officials and giving their



A PLAN OF THE CAPITOL GROUNDS

seats to the Democratic contestants. The cases were later carried to the court of appeals, where all the Republican contestees were denied relief except the attorney-general; and his case did not reach the court of appeals until after the Republicans had a majority on the appellate bench.

In the interim, however, the newly-declared officials, after having taken the oath of office, hurried to the State House, to make formal demand for possession of the respective offices. It was about five o'clock on the afternoon of February twenty-sixth that Mr. C. B. Hill, the newly-made secretary of state, came into my office, preparatory to demanding possession of it. He was accompanied by several friends, and some of the newly-declared Goebel minor state officers. This was the first time I had ever met my opponent. Not only had the claimants for the offices, and the friends of the different sides, held aloof from one another; but, in Frankfort, the social lines were as closely drawn as the political affiliations were distinct. I knew that the office of the secretary of state was mine by right for four years. I felt, however, that Mr. Hill was entitled to the courtesy and consideration due to any guest, so I received him with courtesy and offered him the very best chair in the office. After a few moments of rather strained conversation, Mr. Hill informed me that he had been elected to the office of secretary of state; that he had taken the necessary oath, and had called to ask permission to take possession of the office. I told him that the tax-payers of the state would object to maintaining two secretaries of state in one office; and that as I had been elected to that position, I must decline to resign

it to another. By this time there were faint smiles on the faces of all present; and my visitor took his departure, with an invitation from me to call again.

All the other Republicans, except Clifton J. Pratt, refused to vacate their offices. The Democratic claimants marched back to the Capital Hotel, and within an hour had filed, in Judge Cantrill's court, their previously prepared suits to enjoin the Republicans from further attempting to perform the duties of their respective offices.

On the next day, the state was blessed, or cursed, as the case may be, with a completely established dual government. The Democratic claimants opened their offices in the Capital Hotel; and the Republican state officers retained possession of the offices on State House Square.

CHAPTER XXI

DEMOCRATIC SLEUTHS BEGIN WORK

Decision against Republicans — Action of Legislature final — Goebel partizans threaten to take forcible possession of the offices — Situation becomes warlike — The Democrats appropriate one hundred thousand dollars to discover and punish the assassin

On the tenth of March, Judge Field handed down his decision. It favored the Democrats; for he declared, on the ground that his court had no jurisdiction to try the cases, that the decision of the Legislature was final and conclusive, and not subject to review. The Republicans at once carried the cases to the court of appeals. Pending the result of this action, on every hand the more rabid among the Goebel partizans said they did not propose waiting for the decision of any more courts, but intended to go to the State House, throw Taylor out, and forcibly take possession of the offices. Upon this announcement, the aspect of affairs began to look warlike. In truth, bloodshed and war seemed imminent; the situation was indeed so alarming that the War Department at Washington was implored to disarm the rival factions. In the meantime the Democratic branch of the general assembly proceeded to pass a bill, appropriating the sum of one hundred thousand dollars for the ostensible purpose of apprehending and punishing the murderers of Mr.

Goebel, always assuming, of course, that the murderers were Republican conspirators. Of this amount twenty-five thousand dollars was to be set apart simply for the purpose of investigating the crime and the "clues" that might lead to the detection of its perpetrators. When the law went into effect, five thousand dollars of the fund was offered by the five reward commissioners, who, in the meantime, had been appointed, for the arrest and conviction of each principal as well as each conspirator.

The appropriation of this enormous fund meant that some one would have to suffer for Goebel's murder, whether he was guilty or not; and that the claim of Goebel's political heirs—that he met his death by reason of a huge Republican conspiracy—would be established, whether right or wrong, if money could bring it about.

The late Thomas C. Campbell and a number of diligent sleuths were immediately employed, under instructions to obtain all the testimony necessary to sustain the "Republican conspiracy" theory. Those who made the "proper" investigation were entitled to the twenty-five thousand dollars set apart by the reward commission to pay the workers in that particular line. Mr. Campbell and the detectives, it is needless to say, made the "proper" investigation. They lost no time. It was necessary to establish first a connection between the place from which the shots, five in all, were fired and the Republican officials. This would bring the murder to their door. The office of the secretary of state was on the first floor of the Executive Building and in the southwestern corner of it, the corner nearest the spot where Senator Goebel fell

mortally wounded, and, therefore, the most convenient point from which the shot could have been fired. I occupied that office, which was a private one. Consequently, if it could be shown with any degree of certainty that the shot came from this office, it would in the minds of many directly implicate the Republican party in the assassination by connecting the crime with one of the Republican state officials.

This was the theory of the prosecution, and, once decided on, it was most widely advertised. The first announcement was made on the eighth of February. Immediately on recognizing its meaning, I gave out a statement to the effect that, as far as I might be concerned, I was on the train near Louisville at the moment when Mr. Goebel was shot.

Previously to this, however, two detectives had visited all the offices in the Executive Building and had obtained from each office a statement as to the whereabouts of the occupants at the time of the shooting. This was unhesitatingly given. When the two detectives came to my office I was alone. It had already been charged that those instrumental in bringing the mountaineers to Frankfort on the twenty-fifth of January were to be indicted for the killing of Goebel. Knowing that I had assisted in doing this, I was as non-committal as possible to the detectives, particularly as I had no friend present to bear witness to what might be said during the conversation. I was so placed that if I refused to state where I was at the time Mr. Goebel was killed, the refusal could and, I knew, would be used against me; so I told the detectives that I was out of Frankfort and that no one was in my office. After this fact had been ascertained, there appeared no difficulty

in the way of choosing my office as the place from which the shots had been fired. No one was in the office, consequently there was no one to deny any charge made. The prosecution was gleeful regarding the "disclosure" made by me and immediately asserted through the press, with more vehemence than ever, that the shot came from my office, and at the same time insinuated that I was implicated in the murder.

The reason for this was manifest. I was a young man. It would be much easier to convince the public that the ambitions of a young man would carry him into the machinations of such a criminal conspiracy than it would be in the case of an older and more experienced person. I had been an outspoken partizan and extremely active in many of the meetings and conferences in Frankfort. I had brought a number of mountain people to Frankfort, and it was claimed that the death of Goebel resulted from this. I am a mountain man, and the prejudice against the mountaineers was such that the public was expected to swallow with open-mouthed credulity any charge that might be brought against any of them. My office was the most probable place from which the shot could have been fired. If the prosecution could establish with any degree of certainty that the fatal shot came from my office then the prosecution felt that it would not be hard to convince the country that I must have had foreknowledge of the crime. Last of all, I was a Republican official and stood sufficiently high in the party to reflect discredit upon it if the prosecution could succeed in implicating me.

Those of my friends who saw the drift of affairs urged me to leave Frankfort and to remain away until

the excitement of the hour had passed and men had regained their reason. It seemed to me, however, that to leave under fire and while I was being accused of murder would be construed into a confession of guilt, so I determined to stand my ground.

From the day that the Goebel adherents began to charge the Republicans with the assassination of Goebel, it had been my idea for the Republican party to secure the services of good and reliable detectives to have the guilty man discovered. Most of those with whom I had talked agreed with me, but urged that the services of a good detective would cost at least ten dollars a day and expenses and, as it might take months to run the assassin to earth, there was not sufficient money on hand. I did not have money of my own with which to ferret out the crime. I was poor when the campaign began and poorer when it ended, but I saw the necessity of assistance, and employed J. B. Matthews of Somerset, Kentucky, who had done some work of that kind. He did what he could to solve the mystery and later another detective, T. R. Griffin, of Somerset, Kentucky, was called in at my instance.

CHAPTER XXII

MY ARREST

I visit my father and mother — Threatened with arrest, I seek safety in flight, but am taken from a train at Lexington — I pass a gloomy, apprehensive night in a cell

About this time I went to my home in Knox County to see and consult with my father and mother. I told them that from every indication I was likely to be charged with the murder and thrown into jail, and, while I was absolutely innocent of the charge, that my chance of being fairly dealt with was slender. After earnest reflection they concurred in the opinion that I should face my accusers and undergo whatever ordeal might be before me.

When I again returned to Frankfort I resumed the duties of my office. But I was to gain no respite from anxiety and care. On the ninth of March, about midnight, I was aroused from sleep, told that W. H. Culton, of McKee, Jackson County, then a clerk in the auditor's office, had been arrested at his home in South Frankfort on the charge of being implicated in the murder of Senator Goebel, and that warrants of arrest had been issued for Charles Finley, ex-secretary of state under the Bradley administration, Captain John Davis, policeman on Capitol Square during the Bradley and Taylor administrations, my brother, John L. Powers, and myself.

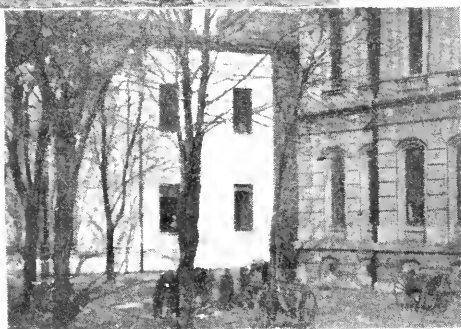
The news came to me like a crushing blow. I was boarding with Captain Davis, who lived on Lewis Street, near State House Square, and he and I went immediately for consultation and advice to the rooms of ex-Governor W. O. Bradley and Judge W. H. Yost, who were boarding at the same place. Ex-Governor Bradley was not in and Judge Yost advised us to make our way over to the State House Square. If we were arrested that night, he said, we would, in all probability, be mobbed before morning, and after we reached the State House we could determine upon what was best to be done.

Captain Davis and I had not been admitted to the State House Square more than five minutes before the officers and police passed down Lewis Street to the home of Captain Davis to arrest us. We went directly to my office to hold a conference with Judge Yost and others. All present were of opinion that, since I had been virtually robbed of my office and then charged with being in a conspiracy to kill Goebel, my conviction would be a political necessity; that the Goebel followers could not afford to take from me the office to which I had been elected and then bring against me the foul charge of murder without making good that charge; and that they had one hundred thousand dollars at their command with which to substantiate it. I knew I might as well try to gather up the foam of the ocean as try to get a fair hearing from men frenzied with passion and drunk with rage. I realized the force of these arguments and for the first time thought seriously of securing my liberty and possibly my life by flight. I had stood at my post of duty until I could stand there no longer. I had done all that honor demanded and

duty required. I could do no more; I owed something to myself; I felt it a duty to protect my life until such time as the people would not in their madness take it from me.

The next day we learned that the five of us, who had been accused, were charged with being accessories before the fact to the murder of William Goebel, and that warrants for our arrest had been sworn out by one T. B. Cromwell, of Lexington, Kentucky, a man unknown to me, whose chief business was that of a detective and who incidentally was a newspaper correspondent. Section 31 of the Kentucky Criminal Code prescribes that before a warrant for arrest can be issued in a felony case an affidavit must be filed, stating the facts upon which it is sought to secure the warrant. Upon examination it was found that in these cases no such affidavit had been filed. We had no idea what the prosecution proposed proving, and, if, in the very first move, the fundamental principles of the law were to be ignored and men were to be charged with the blackest offense known to the law upon the mere statement of an irresponsible detective, I thought that safety lay in flight; so I determined to escape the wrath of a passion-ruled party, partizan courts and the perjury and corruption consequent to the enormous "blood-money" fund.

Captain Davis and I decided to get away, if possible, on the night of the tenth of March. The question arose, how was it to be accomplished? The streets of Frankfort were carefully guarded, while State House Square was surrounded with detectives and men interested in our apprehension. It was finally decided that twenty-five or thirty soldiers should be despatched



The Capitol. Goebel fell at the right of the fountain

Taylor soldiers on guard

Governor Taylor's desk; Captain John Davis on the right

Governor Taylor at his desk

ON THE CAPITOL GROUNDS

to London, ostensibly on duty of some kind and that Captain Davis and I should go with them in uniform. And I might here add that this attempted escape has been the strongest point made by the prosecution against me, since it is now known that the Taylor pardon accepted by Captain Davis (at the same time I accepted a similar one for alleged complicity in the Goebel murder), was no proof of guilt, since even the prosecution now admits that he is an innocent man. His pardon, like mine, was accepted as a possible shield against judicial murder. Holland Whittaker, now admitted to be innocent, accepted a similar pardon for a similar purpose.

A few moments before the early night Chesapeake and Ohio train for eastern Kentucky was due at Frankfort, a squad of soldiers, fully uniformed and carrying guns over their shoulders, fell into line in the hallway of the Executive Building. Captain Davis and I took our places in the ranks and we all marched to the station. Just as the train was leaving we hastily boarded it; a number of police and detectives got aboard, no doubt suspecting a ruse. As we sped along from Frankfort to Lexington, I was revolving in my mind the scenes through which I had passed, and wondering what the future would bring to me. The fact that I was being forced to flee; forced to play the part of the guilty; forced to leave my post of duty to escape unreasoning wrath, as well as the courts, whose duty it is not to scourge but to shield the innocent from oppression and wrong — these were the thoughts burning themselves into my very soul. I had never run before, but had always met responsibilities, of whatever character, face to face. The sensation was a new and most

miserable one. A thousand conflicting doubts and determinations arose in my mind while on that train. From time to time I felt like leaping off, making my way back to Frankfort, and saying to those who were seeking innocent blood that I was ready to meet any and all charges that might be preferred against me. Then the considerations that had suggested my flight asserted themselves, and I put aside the impulse.

We continued our journey. When we reached Lexington a great crowd had assembled at the depot. Our attempted escape had been telephoned to Lexington, fifteen hundred dollars offered for our arrest, and the civil authorities of the city, together with a company of state guards and a number of interested citizens, had come to arrest us. Our car was nearly full of soldiers, but by an oversight of the commanding officer, they did not seem to understand they were there to protect Captain Davis and myself from arrest. When the train stopped at the depot near the Phoenix Hotel, the police and city officials were permitted to make their way into the car where we were sitting, and in a very short time it was filled with officers with drawn revolvers. Our soldiers had long rifles, and, even had they attempted to resist the arrest of Captain Davis and myself, they were in no position to do so, and very likely would have been killed or forced to surrender. I was recognized by some of the officers, immediately covered with drawn revolvers, and my surrender was demanded. I was unarmed and unresisting, and made no reply. I was seized and dragged from the car into the crowd outside; my overcoat was jerked off and my shirt torn from my body. On toward the county jail the crowd moved, cursing me, and applying

to me every abusive epithet that excited passion could use. Still I offered no resistance, and uttered not a word.

When we reached the county jail I was immediately taken to the jail office, where a suggestion to search me was made by one of the rabble. Against this I raised my voice in protest for the first time, saying that no one had a legal right to search me. No sooner had the words fallen from my lips, than I was struck on the top of the head from the rear, either with a billy or "knucks;" for a moment I staggered, and then fell unconscious. When I recovered, the blood was flowing profusely from my head. The jailer, Mr. Morgan Gentry, then appeared upon the scene. He took charge of me and escorted me to the third story of the jail. In the meantime the news of our arrest had spread over the city like wildfire, and newspaper reporters were soon on the scene seeking to interview us. I felt the necessity of giving to the public an explanation of my actions. That my motives might not be distorted, I decided to write a statement myself. Paper and pencil were supplied me, and, as soon as my wound was dressed, I sat up on the cot in the jail cell and wrote the following statement, which was copied in all the Kentucky papers friendly to my cause:

I have nothing to say except that I desire a speedy trial; and I have no fear of its result before a non-partizan court and jury. I have never had, in the once threatened, nor have I now in the actual prosecution, but two things to fear; and they are the evil and corrupt influence that one hundred thousand dollars can have in the prosecution of any case, and the political influence that will be incident to these trials. That these are not small things to fear, any sober-thinking man must confess. I am innocent of the charge preferred

against me. I am willing for the public to know my entire connection with the very bitter strife in this campaign.

When arrested I was leaving what I thought would be causeless persecution. How fully has been realized my fear that I should be tried by a partizan court, and a jury composed of my political enemies, the following pages will show. To what extent my foreboding that the corrupt influence of one hundred thousand dollars "blood-money" and partizan political hatred would succeed in thwarting justice and enthroning wrong, the events which have followed plainly point out. Whether the prosecution against me has been "causeless persecution," as I then predicted it would be, I will let those who peruse these pages judge for themselves; and whether my fear of the enormous corruption fund and the political nature of the prosecution was merely visionary, or founded upon fact, I will let the public decide. Whether it was wise, under existing circumstances, to accept the pardon from Governor Taylor for the offense alleged against me, and then agree to waive all rights acquired under it, provided the prosecution would allow me to be tried outside of Judge Cantrill's district, and by a jury divided equally as to politics, I will also let others determine.

That night after my friends had left, I lay down on the small cot in the third story of the jail. I was alone, Captain Davis having been moved to another cell in the bastile. The tread of the soldiers on guard below, and the mutterings of an angry and excited crowd without, could be heard. The scenes through which I had passed, and the pain from the blow I had received at the hands of some unknown coward, while I was defenseless and in charge of the officers of the

law, left me little prepared for sleep. For a time thoughts, colored by my gloomy surroundings, crowded thick and fast on imagination's fruitful soil. Sometimes I wondered if I might not be dragged from the jail as I had been dragged from the train, and forced to give up my life to a hungry and infuriated mob. Finally a troubled sleep came to me, and when I awoke the next morning from a hideous nightmare, it was only to find the reality more horrible than my dreams,—my liberty restrained by iron bars, massive walls, steel-latticed windows and bolted doors. But great sorrows, like great ecstasies, are not long sustained. Nature is kind and relieves the strain. *Weeping endureth for a night, but joy cometh in the morning.*

CHAPTER XXIII

FROM LEXINGTON TO LOUISVILLE

Nocturnal visit of officers to my cell — Handcuffed, I am taken from jail, driven across country to a railway and hurried to Louisville — A defense fund of ten thousand dollars

It was the Sabbath, March eleventh, 1900. The sun was shining beautifully; crowds were thronging the vicinity of the jail, while newsboys were crying out the account of my arrest as an inducement to passers-by to purchase their papers. Many of the newspapers and magazines had even at this time, as they have since, kind things to say of me. Many people, it has proved, have remained my unfaltering friends through evil as through good report. Here and now I thank these friends, both press and personal, whom I know or may not know, with all my heart. Those words of cheer and comfort which came to me at the beginning of my struggle, when my brain was dazed and my heart crushed and bruised by the shock and horror of my position, I deeply and gratefully prize.

Sunday night, or rather Monday morning, about two o'clock I waked to find myself surrounded by men in the uniform of policemen, and others who wore citizens' clothes. I was told to get up; when I hesitated the command was repeated. I asked for what I was wanted, and was told that they "had come for me." I asked where I was to be taken, but the only

answer I received was to "get up;" that they were "going to take me a little distance." I protested. The statement from them that they would only take me out a short distance, together with the late hour of the night, filled me with foreboding. Was a mob to end further legal controversy? I did not know, and was persistent in trying to find out, while my nocturnal visitors were equally determined that I should not.

Captain Davis and I were handcuffed together, the jail doors were thrown open, and we were marched down the street to a two-horse conveyance prepared for our reception. This we were commanded to enter. Four other men entered with us. We were driven over a pike leading out of Lexington. What did this trip into the country mean? If we were being transferred to another bastille, why was not the usual mode of travel adopted? Why was the dead of night chosen for our journey? Why were we kept in ignorance of our destination?

On over the country roads we went, shivering from cold and filled with vague foreboding. After driving steadily for several hours a small town came into sight. I felt fairly confident now that we were being removed to another jail, and that mob violence was not intended. We were in fact being taken to the Louisville jail. After we were locked in cells there, I found that W. H. Culton and Holland Whittaker, who were arrested in Frankfort soon after Goebel was shot, had also been driven across the country from the Frankfort to the Shelbyville jail, the night before, and later lodged in the Louisville jail in order to prevent their being mobbed in Frankfort. This was the first time I had ever seen Mr. Whittaker,

although I was charged with procuring him, among others, to kill Senator Goebel.

On the day of my arrival at Louisville, and for days following, my friends visited me in numbers. Among them was my good friend, Doctor T. H. Baker, post-master at Louisville. What to do, I did not know. I had no money and no lawyers. How could I prepare for a trial without means? What were the few hundred dollars that I might obtain, pitted against one hundred thousand dollars, and that sum augmented also by the entire resources of the whole state? I knew, moreover, that the expenses incident to my trial would be enormous. In Kentucky, the defendant pays the entire expenses incident to his defense; the state pays all the expenses for the prosecution. But I made up my mind that, whatever might be the disadvantages of my situation, whatever the advantages of that of the prosecution, whatever the result might be, I would battle to the very best of my ability against any odds that might oppose me, fight to the bitter end and maintain my innocence and honor to the last. I am an optimist and believe right triumphs always if it is contended for with sufficient trust and courage. I felt sure then that however brightly the names of those responsible for my arrest were temporarily glittering in the light of popular favor, some day they would be lost in the fog of oblivion and obscurity. But Fate, who sits and spins the web of life, was and is now, for that matter, against me.

In a short time after I had reached Louisville the Honorable R. W. Knott, editor of the *Evening Post*, Colonel John H. Ward, Colonel Morris B. Belknap, Colonel Andrew Cowan, and Mr. Donald McDonald,

all men of means and among the most influential and prominent of Louisville's citizens, formed a defense committee and set about raising funds to defend the accused. The object of this move was to shield no guilty man, but to see that each of the accused was accorded a fair trial. The work of the Louisville defense committee progressed admirably. A fund of ten thousand dollars was raised, and ex-Governor John Young Brown and the Honorable Robert C. Kinkead, of Louisville, and Judge James C. Sims, of Bowling Green — all of them among the most distinguished lawyers of the state — were employed as counsel.

In less than ten days after my arrest — if not before that time — the political lines were as tightly drawn in regard to my guilt or innocence as they had ever been concerning the money question, or any other question, that has ever divided the two great political parties in the state. There was not a single Goebel Democratic newspaper published within the confines of the Commonwealth at that time that failed to take the position that I was guilty of the crime charged against me; vice versa with the Republican and independent Democratic papers. To be a good Democrat, it was necessary to preach my guilt, to be a good Republican, proclaim my innocence. The times were out of joint. I had been in Louisville but a few days when Captain Davis and I were transferred to the jail in Frankfort and a heavy guard of Beckham soldiers was thrown around it.

Frankfort at that time boasted two armed camps — the Taylor soldiers, who continued to occupy the State House Square, and the Beckham guards, who used the court-house as a fortress. To strengthen their force

the Democrats swore in from one hundred to three hundred extra guards, who carried small firearms, their own rifles or muskets, the ammunition being deposited at the police station and at other safe and convenient places.

The rumors afloat in the Republican camp were to the effect that Captain Davis and myself were likely to be mobbed and that the Goebel adherents would arrest more of the state officials, and then take forcible possession of the offices. The rumor in the Democratic camp was to the effect that the Taylor soldiers were going to release Captain Davis and myself, and, in turn, arrest Mr. Beckham and other Democratic contestants on the charge of treason. The rumor that reached the general public was to the effect that there was going to be war at Frankfort between the opposing factions. Thus the weary, strife-laden days wore heavily on.

CHAPTER XXIV

MY PRELIMINARY HEARING

Before Judge Moore — The late T. C. Campbell's record — Wharton Golden's testimony — Dramatic scene, pregnant with dire possibilities, that finally passes away without bloodshed — Moments of great peril to myself — I am denied bail and go back to jail

Under the provisions of Section 50 of the Criminal Code of Kentucky, any one charged with a public offense is entitled to a speedy trial. I wanted one. Therefore I bent every energy to hasten the date of my preliminary hearing. This examining trial finally was set for March twenty-third, 1900, and was spread on the dockets to be heard before Judge Dan Moore, of the Franklin County court.

When the hour arrived, the court-room was filled to overflowing. Friends and foes alike crowded into the seats, packed themselves into the aisles and even sought precarious seats on narrow window-ledges. All classes of men were represented, and not a few of the most notorious characters of that and other communities were to be seen in the crowd. Men came armed to the teeth, prepared to assist, if necessary, in the administration of "justice." Here and there, as I surveyed the motley assembly, I met the lowering glances of those who were thirsting for my blood. Without any thought of my feelings, they craned their necks to

obtain a better sight of the "prisoner at the dock," and, with impudent and malignant glitter in their eyes, sought to force me to turn aside my gaze.

Into the narrow confines of the room, the military likewise had been crowded. The Beckham guards, some with gun in hand, others with sash and saber, were stationed at every entrance and exit. Whether these sentries were thus posted to protect me from mob violence, or to help maintain his Honor's dignity, or to prevent my escape should I make a break for liberty, I have never known. Their presence was sufficiently significant.

On the bench sat Judge Moore. On the right of the judge's bench, within the rail, sat a host of politicians, lawyers, prosecutors, and others to a greater or less extent interested in the prosecution. Among these were Arthur Goebel, brother of Senator Goebel, and the late Thomas C. Campbell.

It was the first time I had ever seen either. I had heard of both, particularly of Mr. Campbell; for, from the time that he was called to assume charge of the prosecution of the Goebel cases, the Republican and independent press of the state had permitted no opportunity to escape whereby his record could be made known. The public was frequently reminded of the Cincinnati riots of 1884. In connection with these, Mr. Campbell was openly charged with being directly responsible for the loss of sixty-three lives. It was said, also, that his practice in Cincinnati courts had become so notoriously corrupt that criminals of every class flocked to his office for assistance, shelter and safety, and that his influence and practice were such that none of these was difficult to obtain. Finally,

however, decent people rebelled when Mr. Campbell, apparently throwing all caution to the winds, succeeded in obtaining only a nominal punishment for a man who was plainly guilty of an atrocious crime. Outraged citizens determined to take the law into their own hands and lynch the prisoner. The police and the militia were called out to protect him from the threatened violence, and the clash between the armed guardians of the law and the indignant people precipitated a series of riots that continued for three days. During this bloody period the court-house was destroyed and all its records consumed in the flames that reduced it to ruins. Mr. Campbell, knowing well the danger that the situation held for him, stood "not on the order of his going," but went forthwith, fleeing for safety to New York. Here he once more took up the practice of his "profession."

Now, in this Kentucky court-room, my eyes fell for the first time on this attorney of such unsavory reputation. I beheld a man who was probably five feet eight inches in height and who would weigh in the neighborhood of two hundred pounds. His hair, partly gray, bordered a well-nigh bald head, and the height of the forehead was accentuated by the extreme length of the shaggy locks. His beard was almost black. His eyes were small and of peculiar shape; he possessed a strange and irregularly-shaped mouth.

Immediately on the convening of court, ex-Governor Brown moved to quash the indictment against me on the ground that it did not allege that the crime was committed in Franklin County. Judge Moore promptly overruled the motion. The defense then requested that, in order to prevent any possible collusion, the wit-

nesses be instructed to withdraw from the court-room and warned to hold no conversation among themselves relative to the case. The court responded to this request by sending the witnesses from the room with this injunction: "Don't let nobody talk to you about this case, and don't talk to yourselves."

After a day or two spent in hearing evidence, it became bruited about that the prosecution would put on the stand one more witness, and, with this testimony, close its case. This witness proved to be F. Wharton Golden, who, on the third of March, had been sent for by detective Tom Cromwell, and requested to come to the Capital Hotel in Frankfort. Here Golden was informed that the prosecution had woven about him a mesh of the most damaging proof of his own implication in the murder of Mr. Goebel. Mr. Campbell, who was conveniently present on that occasion, was quick to promise him, however, that, providing he would confess, he would do all within his power to prevent his being prosecuted.

From that day to this Golden has stuck to the prosecution like a postage-stamp to a letter. He felt that danger lurked for him just round the corner, and that it would have sprung upon him had he been but a few degrees higher in the counsels of the Republican party of Kentucky. In the fear that even his somewhat inferior position might not prove sufficient armor to protect him, he sought to insure his own safety by casting his lot with that of the prosecution. It was this Golden who took the witness-stand against me in my examining trial. With pale face and gaze turned unalterably from the side of the defense, he essayed to deliver his testimony with an air of indifference that accorded

but poorly with his very patent agitation. Golden's testimony in this trial, embellished by all that the crafty minds of the prosecution could devise as the days wore away, as well as the testimony of other witnesses, will be referred to and discussed in succeeding pages.

During the whole of this preliminary hearing, and especially while Golden was testifying, Mr. Campbell made frequent plays to the gallery. He put his questions in a way that frequently elicited laughter and applause from portions of the audience. He made frequent references to the "mountain crowd" that came to Frankfort on the twenty-fifth of January, asserting that it was composed of ignorant desperadoes who were bent on murder and destruction. Though the counsel for the accused objected to such illegal procedure, the objections were of no avail. Mr. Campbell did not desist. Finally, Judge George Denny, one of my attorneys, arose to address the court. He said, in the course of his remarks: "Many citizens come to Frankfort; many of our mountain citizens come to Frankfort. I come here myself. It is not unlawful for men to come to Frankfort, nor is it unlawful for them to come here armed."

In his reply to this argument, Mr. Campbell charged that Judge Denny had said he had come to Frankfort *armed*. Mr. Denny hastily interrupted with the remark: "I did not say I came armed." Mr. Campbell reasserted his former statement.

"You did say you came armed!" he thundered.

"I did not," Mr. Denny protested.

"I say you did!" shouted Campbell.

Mr. Denny arose from his chair, his tall form towering over those around him like that of a giant. All

eyes were turned upon the two men. Judge Denny's eyes flashed fire. Mr. Campbell was already on his feet and, as the attorney for the defense arose, advanced a few steps toward him. The latter could make no movement in the direction of Campbell, for the table between the two men barred his progress. I was in front of this table and directly between the two men. Their bellicose attitude first caused a hush to fall over the crowded court-room, then, in an instant, all was confusion. On every side, men sprang to their feet. Many made frantic efforts to reach the exits — windows or doors — and escape from the scene. Others seemed bent to force the issue to a crisis. From various portions of the room one could hear distinctly the click of rifle and revolver hammers as they were drawn back ready to be snapped by a hair's pressure on the triggers. The flash of steel glinted on every hand. I sprang to my feet and, as I arose, I saw at least ten revolvers leveled at my head. Then, realizing that I made a better target standing than sitting, I sank back in my chair.

Later I was reliably informed that four men held revolvers leveled at my back. Had a shot been fired at that moment, I am confident that no less than a score of bullets would have pierced my body.

When the difficulty arose, some of the guards, from their stations near the exits, rushed forward, guns in hand. The deputy sheriffs who had been sworn in only a short time, drew their weapons and plunged into the crowd. Their action only increased the confusion, for the latter, in their citizens' clothes, had nothing to distinguish them from the others. In truth, no one could tell — I am sure I, at least, could not tell —

whether those with revolvers in their hands at this moment were bent upon bloodshed or determined to prevent it. Mr. Zack Thomason, a tall, athletic policeman, walked up and down in front of me, cudgel in hand, commanding peace and order. The cooler and more conservative in the crowd rallied to his assistance and the confusion gradually abated, giving way to calls for order. "Sit down! Be quiet!" many shouted. But even these exhortations did not prevent a continuance of the wild scramble to gain the exits; for men made a frantic rush toward the doors, falling over one another in their desperate efforts to escape the general fusillade of shots that they fully expected would follow.

Pandemonium reigned in the court-room and, it is safe to say, this scene has never before or since had its parallel in any judicial tribunal in Kentucky. The excitement was at white heat and continued practically unabated for fully five or ten minutes. During every second of this time, I expected to be shot. For once in my life, at least, I looked instant death squarely in the face. The experience did not prove a pleasant one, nor one that I should care to repeat. But, when such a moment comes, it seems that it brings with it sufficient courage to enable one to endure it.

I shall always credit Policeman Thomason with quelling the riot and saving my life. Order was finally restored, but not without difficulty. The *Courier-Journal*, in its account of the incident, at least did me the honor to state that I was no physical coward. It said: "Powers leaped to his feet quickly, but in a moment his face calmed, and he recovered the cool manner which characterizes him under almost any cir-

cumstances." After the excitement had partly died away, ex-Governor Brown, who, next to myself, was probably the most hated man in the court-room and whose life was also in momentary danger, succeeded in convincing Mr. Campbell, with the assistance of the stenographer, that he had misunderstood Judge Denny's remark. This was the end of the matter, and consideration of the case was resumed.

Throughout the whole state of Kentucky, feeling was so intense and bitter that both ex-Governor Brown and Judge Sims, who was an anti-Goebel Democrat, took their own lives in their hands in defending me. But they did not consider that when moving in the performance of their duty.

Ex-Governor Brown urged then and there that an immediate adjournment of the court be taken in order to protect my life from the enraged and passion-tossed mob.

Mr. James H. Polsgrove, one of the attorneys for the prosecution, protested, however, and asserted that to adjourn at that time would be a confession to the world that a court of Kentucky was "unable and unwilling to protect the prisoner." Judge Moore immediately ruled, in his characteristic fashion, against adjournment. Turning to the spectators he said, in a commanding tone:

"You all sit down and behave yourselves. If this occurs again, I will put every one of you out of the house, and then you will be cussin' old Dan Moore." It was in this fashion that the Court very frequently alluded to himself.

Shortly following this display of Kentucky justice, the Commonwealth closed its case. The Court prompt-

ly overruled a motion for dismissal and with similar celerity overruled a motion to admit me to bail. I was, consequently, remanded to jail. A battalion of soldiers under Major Embry Allen, of Lexington, was thrown around the bastille.

On the same day, Wharton Golden's wife denounced her husband in the severest terms. In a letter to Will Hawn, her nephew, she said: "He (meaning Golden) has been drunk or bribed. . . . I would not believe him on oath. . . . I am sorry,—not for Wharton; 'tis those innocent men he has lied on."

CHAPTER XXV

THE PROSECUTION'S PLANS

Arrest of Combs, Noakes, Youtsey and others — How Lawyer Campbell and Arthur Goebel secure a "confession" from Youtsey — Decision against Taylor and Marshall — Report of the grand jury, indicting myself and many others — Federal supreme court decides against the Republicans — Governor Taylor's flight to Indiana — Denunciatory Democratic platform

The action of the court in my case only served, it seemed, to whet the edge of the public's appetite for a similar arraignment and disposition of other alleged conspirators. Mr. Hazelipp, steward at the Lakeland Asylum, had been arrested and charged with being an accessory to Goebel's murder. Threats were now heard to arrest Governor Taylor. As the days passed, they became louder and more persistent. At the same time, Richard Combs, alias "Tallow Dick," and another negro, Mason Hockersmith, were accused through the columns of the public press. In a few days, a warrant was issued for the arrest of Combs, who surrendered and was brought to Frankfort and lodged in jail. Here, *for the first time*, I met Dick Combs. Nevertheless we stood formally charged with the commission of the same crime, he as principal, I as accessory.

This arrest had no sooner been made, than it began

to be rumored that Robert Noakes, who lived at Corbin, Kentucky, would also be placed under arrest and formally charged with complicity in the Goebel murder. This report was immediately followed by the arrest of Henry E. Youtsey, stenographer in the auditor's office. He was taken into custody in South Frankfort and forthwith was charged with being a principal in the crime.

Youtsey had been employed as a stenographer by Auditor S. H. Stone during the Bradley administration and had been retained in the office under the administration of Auditor Sweeney of the Taylor régime. He was no sooner locked behind bars than he was visited by Arthur Goebel and Mr. Campbell; in truth, they were closeted with him before even his own attorneys, L. J. Crawford and R. W. Nelson, both of Newport, Kentucky, could reach his side. Mr. Campbell wrote out a confession for Youtsey, implicating in Goebel's murder, Governor Taylor, James B. Howard, of Clay County; Berry Howard, of Bell County; "Tallow Dick" Combs, Frank M. Cecil, of Bell County, and my brother. This they induced Youtsey to sign. For some reason, he could not be induced to include my name in the list of those he thus directly accused of Goebel's assassination. According to this "confession," it was Dick Combs, Frank Cecil, Berry Howard, or Jim Howard who had fired the fatal shot. He asserted, further, that the shot had been fired from the office of the secretary of state — my office — but said he knew nothing against me.

When Youtsey's attorneys finally reached him, he closed up like a clam and could not be induced to make

a statement of any kind. At the same time, and before he knew of Youtsey's confession to Campbell, James Andrew Scott, a prominent Goebelite lawyer, who had been a candidate for attorney-general before the famous Music Hall convention, repaired immediately to Winchester, Kentucky, and there sought out Judge C. S. French and Mr. N. H. Witherspoon. These were, respectively, the father-in-law and the brother-in-law of Youtsey. To these gentlemen, Mr. Scott urged the necessity and wisdom of Youtsey's turning state's evidence. It is said that he even went so far as to urge Judge French and Mr. Witherspoon to "get a part of the one-hundred-thousand-dollar reward, hang Taylor and damn the Republican party."

Both Judge French and Mr. Witherspoon are men of untarnished integrity and high social standing. Moreover, they were pronounced Goebel Democrats. But this fact did not deter them from making public Mr. Scott's advice. The statement which they issued created a profound sensation, and, it is needless to add, caused the greatest consternation in the Goebel ranks. Many who, up to this time, were convinced that an honest effort was being made to bring Goebel's slayer to justice, now began for the first time to question the sincerity of the prosecution's purpose. Many, indeed, were by this thoroughly awakened to the fact that the motive behind the prosecution was to "hang Taylor and damn the Republican party," as Mr. Scott had stated it, rather than to bring the guilty to justice.

While these events were going on in the criminal courts of Kentucky, the civil cases growing out of the dual government that had been established in the state remained practically unchanged. It was evident, how-

ever, that a decision in the matter would soon be forthcoming. In fact, but a short time elapsed before the Democratic majority of the appellate court of the state handed down a decision in the Taylor-Marshall litigation. This opinion held that the action and the decision of the Legislature were not subject to review in the state's courts. In this, two of the Republican judges concurred and, as a last resort, Taylor and Marshall obtained a writ of error to the supreme court of the United States. Pending the decision by this tribunal, the Republicans, of course, continued to hold possession of the offices.

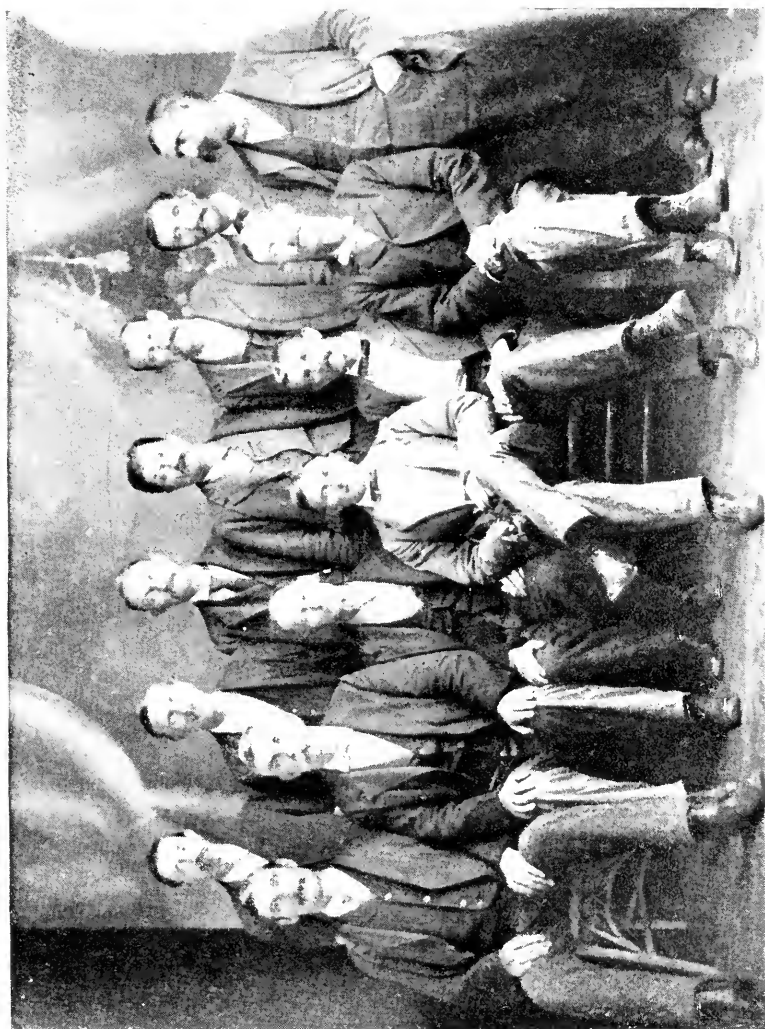
In the meantime, events were progressing rapidly in the other line of court procedure. The Franklin circuit court, that haven of Goebelism, began one of its sessions on April second, with Judge James E. Cantrill presiding. Toward this the eyes of the whole state were at once turned. Here the investigation by the grand jury would begin, and here, also, the grand jury would deliver its report, formally finding indictments against those charged with the murder of Mr. Goebel or dismissing them from custody.

The political complexion of this grand jury was, as a matter of course, of much concern; for it was clearly obvious that the political sentiments of its members would in no little measure influence their deliberations. It was not surprising, therefore, to discover that, when it was finally selected, ten of its twelve members were Goebel Democrats. The two Republicans who had been permitted place in the body composed an ineffective minority, as the concurrence of nine jurors is sufficient for the return of an indictment.

A few days after it was impaneled, the grand jury

filed slowly into the court-room and handed the clerk of the court a number of indictments. For days this action had been patiently awaited by residents in every section, every nook and corner of the state of Kentucky. It was thought that now the public would be informed of the names of those against whom indictments had been found. Despite the fact that the finding of the grand jury is a matter of public record, the public, in this instance, was to know no more after the filing of the report than it knew before. Judge Cantrill immediately took possession of the bunch of indictments, deposited them in his coat pocket and, leaning comfortably back in his chair, smiled broadly.

These indictments remained secret until April seventeenth, when their contents were made public. Then the fact was disclosed that five men had been charged, formally and officially by the grand jury, with the murder of Goebel. Indictments were found against these men as principals. They were: Holland Whitaker, of Butler County; Berry Howard, of Bell County; Henry E. Youtsey, of Campbell County; James B. Howard, of Clay County, and "Tallow Dick" Combs, of Lee County. The following were indicted as accessories before the fact: W. H. Culton, of Lee County, ex-clerk in the auditor's office; F. Wharton Golden, of Knox County, a teamster; my brother, John L. Powers, and myself, both of Barbourville, Knox County. The grand jury further reported that, in its opinion, W. S. Taylor, of Butler County; Captain John Davis, policeman of Capitol Square; Green Golden, of Knox County, cousin of Wharton Golden, and others unknown and unnamed, were accessories. It reported, also, that there were other principals, in



THE JURY THAT FOUND THE INDICTMENT AGAINST ME

its opinion, whose identity was unknown. Against those named as accessories in this indefinite manner, no indictments were returned at this time, but, before the final adjournment, true bills were brought against Taylor and the others, formally charging them with being accessories as I was charged.

Mr. Hazelipp was not indicted, and both he and a Mr. Sutton, then sheriff of Whitley County, Kentucky, who had been arrested also on a charge of complicity in the murder, were immediately released from custody. The action of the grand jury in returning a true bill against Governor Taylor was not made public; no one knew that such action had been taken, save those who had attached their names to the finding and the court officials, whose position made it incumbent upon them to know. Taylor, therefore, continued to discharge his duties as chief executive, unconscious of the official and formal charge that hung over him. No attempt was made to arrest him and he had no knowledge then that anything more serious awaited him than the decision of the United States supreme court, which was expected shortly.

Those under indictment who had not been arrested, besides Taylor, were Charles Finley, who was in Indiana; John L. Powers, who was at his home in Knox County; Berry Howard, who was at his home in Bell County; Wharton Golden, who was under the surveillance and protecting care of Mr. Campbell; and James Howard, who was at his home in Clay County.

I was, it seemed, the only one in custody at this time upon whom the prosecution intended to pour the vials of wrath. I was, therefore, determined, if possible, to have my trial held in a county as remote from the

angry passions of Franklin County, the unfriendly Franklin circuit court and its partizan judge, as was within my power. My attorneys, consequently, sought for and obtained a change of venue, but they did not succeed in having my case transferred to another judicial circuit. My case was taken to Scott County, but Judge Cantrill presided on the bench here as in Franklin County, and the prosecutor, Mr. Franklin, was the same. Apparently neither of these two proposed to relinquish the opportunity that my case seemed to present to further their political ambitions by placing themselves in the lime-light before the state Democracy. In truth, I gained but little; for Scott County is the home of Judge Cantrill, and also of his son, J. Campbell Cantrill, an active Goebel partizan and politician. It was apparent that the atmosphere of the court in this county would be as fully charged with Cantrillism as that of Franklin County. The die was cast, however, and my case was set for trial on the ninth of July. The cases of Holland Whittaker, Henry E. Youtsey, Captain John Davis and Dick Combs were also taken on change of venue to this same county, and we were all, therefore, transferred without further delay to the jail at Georgetown, the county seat. W. H. Culton had been granted immunity by the prosecution in exchange for his testimony and he was not deprived of his liberty.

On April thirtieth, 1900, the Taylor-Beckham case was argued before the United States supreme court, and, nearly a month later, on May twenty-first, Chief Justice Melville Fuller read the majority opinion of the tribunal. It found that the court had no jurisdiction in the litigation. Those to whom this decision

gave victory were wild with delight. Those who felt the sting of defeat in its finding were discouraged beyond all measure. They had fought a good fight for civil liberty in Kentucky, had witnessed the sacred rights of the people trampled into dust, had beheld the courts of justice of the state reduced to subservience to a powerful political party, had sought in vain for some blessed spot on Kentucky's soil where the wrongs of the people might be righted, and, in despair, had at last centered all their hopes on the supreme court of the United States. The decision brought them additional despair.

Governor Taylor, on the day the opinion was handed down, was in Louisville, under the surveillance of a detective who held a warrant for his arrest, although even up to this time the indictment against him was a profound secret. If the United States court's decision had been favorable to his cause, it is probable that the warrant would never have been ordered served, but the moment that it was learned the opinion favored Beckham, Goebel's heir, the detective was instructed to serve it without delay.

Taylor, when the news of the court's decision reached him, immediately telegraphed Adjutant-General D. R. Collier at Frankfort to dismiss the militia, which had been for so many weary months on guard at the State House, and turn everything over to Mr. Beckham. This done, Taylor stepped into a carriage, was driven at once over the river into Jeffersonville, Indiana, successfully eluding the watchful eyes of the sleuths who had been tracking him. From that moment he became an exile from his native state — a lot that has been the portion of many who have tried to

live for society, truth and justice when mad riot raged unchecked.

During much of this time, because of the unsettled condition of affairs, the auditor of state had refused to pay out any of the public moneys. I had, however, paid all my own expenses, the salaries of the two clerks I employed in my office and my assistant. I felt that it was due the people, who had given me the office, to maintain it as best I could until the confusion was ended. Now, however, I felt that the crisis in my own affairs had come. I was in jail, my office was virtually gone, my expenses were heavy, and the end of my purse was not far distant. Taylor and Finley were secure from arrest in Indiana, where Governor Mount had refused to honor a requisition for the return of Finley to Kentucky, thus assuring likewise the safety of Taylor; and, in short, I alone was left behind to carry the weight of their alleged sins and bear the brunt of an unequal battle. The enemies of Taylor and Finley at once denounced them as "guilty fugitives from justice."

The flood-gates of hatred, malice and revenge were thrown open by the Democratic press. Every effort was made that shrewd minds could devise to influence public sentiment against me. Every incident, no matter how trivial, that could in the least be interpreted as incriminating, was magnified, commented on and added to, while anything that pointed to my innocence, no matter with what force or conviction, was carefully suppressed. Not only did the Democrats control the most influential newspapers of the state, but they controlled, also, the courts. They looked upon my conviction as a political necessity and con-

sequently entered the fight against me to win at all hazards, staking their fortunes and their all upon the outcome.

To make it even more certain that my conviction would be secured, the Democrats, in nominating Mr. Beckham for governor, had the following plank inserted in their platform :

“ We declare to the world that the mob and the assassin shall not be the arbitrator of the rights of the citizens of Kentucky, nor shall the penalty of an appeal to the law and the regularly constituted authorities be death at the hands of the assassin. Law and order must and shall prevail in Kentucky.

“ We present to the people of Kentucky the picture of an army of intimidation, unlawfully quartered in the public buildings of the state ; a state senator, in the discharge of his duty to the state, stricken down by an assassin's bullet fired from ambush in the Executive Building, then occupied by his political adversary, who hoped to profit by his death ; that adversary filling and surrounding the building with armed men, instructed to defy the civil authorities and prevent search for the assassin ; the same political adversary and Republican pretender by force dissolving the Legislature to meet in a veritable slaughter-pen for the Democratic members, driving its members through the streets of Frankfort at the point of the bayonet, forcibly preventing the Legislature from meeting in its lawful and proper place ; keeping armed rioters and disorderly men under the very window where lay dying the assassin's victim ; aiding with the soldiery those lawfully accused of capital crimes to flee from justice.

"We earnestly invite the support by voice and vote of every sincere lover of civil and personal liberty to join with us in this campaign against the forces gathered under the banner of the government of assassination. The true manhood of Kentucky can not and will not indorse assassination in office, and we appeal to every Democrat and every good citizen of Kentucky to unite with the Democratic party and thus express his detestation of foul crime."

Under such vituperative denunciations as these, is it any wonder that I was hated before I was seen, condemned before I was heard? What further proof is needed that my conviction was an absolute political necessity? It was, in short, cold-blooded expediency that drove them to my prosecution and goaded them on throughout its tortuous courses.

A failure to convict me was considered to be so fraught with danger and disaster to the Goebel followers and political heirs that the highest Democratic authority, a state convention, was moved to issue a mandate to the Democratic judge who was to preside at the trial, to the Democratic sheriff who was to summon the jurors, to the Democratic clerk and the Democratic citizens, some of whom would compose the jury that would hear my case, that there *must* be a finding and a *verdict of guilty*. *This was the party's necessity.*

But this was not all. There were other reasons for conviction, other things at stake besides Democratic success at the polls. Those Democrats directly interested in my prosecution, as well as many Democrats throughout the state from the incumbents of the highest offices to the most insignificant witness, as well as

a host of Democratic office-seekers, beheld avenues of political preferment opening before them in return for their services in proclaiming my guilt, and in the eyes of some Republicans as well as Democrats, glittered the gold of the one-hundred-thousand-dollar bribe-money fund. What an inducement to offer for needed proof! What a lever to use in the production of damning evidence! The sober-minded of all parties expected high tides in the streams of perjury, as well as that perjurers would be procured by those whose duty it was to prosecute them. In the face of all this, for what could I hope? What could I expect?

CHAPTER XXVI

REPUBLICANS BARRED

My first trial before Judge Cantrill — Selection of a partizan jury — Disregard of the law for the purpose of insuring conviction — Campbell's statement in behalf of the prosecution

As the town clock struck nine on the morning of July ninth, 1900, I was pacing up and down the narrow corridors of the Georgetown jail. This was the day set for my trial, and I was thinking deeply of the ordeal through which I was soon to pass. I realized as never before that hate and misunderstanding are stubborn things to reckon with, but the old saying, that men who complain of them are yet in the kindergarten class, came dancing forth from the chambers of my dizzy brain, and I concluded then that the safer, saner way would be neither to flee to my troubles nor drag them about with me.

The call of the sheriff informed me that it was time to appear in the court-room. In the custody of three deputies the trip was quickly made. As I entered, I was at once struck by the fact that all the women in the audience were seated on the prosecution's side of the room. Some even occupied chairs within the bar proper. This I could not understand, for I recognized among them some of my best friends. I was afterward informed that this arrangement was made

by order of the court. Evidently this was for the purpose of making it seem to the jury and the public that I was utterly without sympathy; that even the women of the state had entered the arena to cry aloud for my blood.

Judge Cantrill, with flowing side-whiskers, bald head and an athletic stature, sat upon the bench. I was the object of every one's gaze. From every corner of the court-room men and women adjusted their glasses the better to inspect me. The indelicacy — aye, the brutality — of it all I observed, and it seemed to freeze me to the marrow of my bones.

Out of one hundred and seventy-nine witnesses summoned for the defense, only five were present. It was evident that, under such circumstances, stripped, as I was, of means to establish my innocence, I could not go to trial. The only thing to do, therefore, was to announce that I was not ready for trial. Judge Cantrill, however, ruled that the trial should proceed, and in lieu of a continuance, he tendered me the compulsory process of his court for the purpose of securing the attendance of my witnesses — a process to which, according to the Constitution of Kentucky, every man accused of crime is entitled. It was obvious that, if I failed to secure the attendance of my witnesses, the Court wished the public to understand that he had done all in his power to assist me, and that he could not be held accountable for their failure to appear.

The examination of jurors soon exhausted the regular panel of twenty-four, and the court, over the vigorous protest of the defense, ordered the sheriff of the county to summon one hundred bystanders, residents of Scott County, for jury service.

According to the law, as the court of appeals later held, the jury-wheel should have been exhausted before these bystanders were summoned. The names in the wheel had been placed there in October, 1899, four months before Senator Goebel was murdered. At that time some three hundred were so placed in the wheel. There was not, at that time, any motive for "packing" any jury that might be drawn during the succeeding terms of court; and that the regular jury-wheel was not so packed is clearly shown by the fact that of the twenty-four regularly impaneled talesmen, who were excused from service, some were Republicans and some Independent Democrats. The prosecution, it is evident, very quickly decided that, if the remaining names in the regular jury-wheel when drawn would assemble such a body of men, politically considered, as the twenty-four men just excused, it would be far better to have nothing whatever to do with the remaining names in the jury-wheel. In other words, out of the names remaining in the wheel a jury might be selected that would accord me something like a fair trial; or the verdict it might render would be its own inability to agree, and, in such an event, I would be entitled to my freedom on bail, pending a second trial. A divided jury likewise would do much to convince the public of my innocence. Such a possibility, the prosecution had firmly determined, should be avoided at all hazards.

The sheriff and his deputies — all Goebelite office-holders — proceeded to the rock-ribbed Democratic voting precinct of Stonewall to get them. Its citizens were more rural, more reliably Democratic than those of any other portion of the county. It was among

such that rankled the fiercest hatred for those charged with the Goebel murder. Illiteracy, narrow-mindedness and Democratic reliability were the qualifications for jury service sought for by the prosecution in my case. It is said that supposed fruit vendors and stock traders had gone through that section of the county from which the prospective jurymen were summoned, and that their feelings in regard to my alleged guilt were fully known before they were summoned. When the men arrived, Judge Cantrill, who was a bosom friend of Senator Goebel's during his life-time, deliberately left the bench and walked around where the special venire sat, and — before any oath had been administered to them — began to question the men in a tone inaudible to any except those in the vicinity of the questioned and questioner. After an investigation which seemed to be satisfactory to himself, he excused those who, in his judgment, did not come up to the requirements of the case. Not a single lawyer for the defense was requested by the judge to be present during this strange and unprecedented proceeding, and none of them was present.

Those who have ever given thought to jury trials know that the selection of the jury is of the utmost importance. If the jury is packed or bribed, evidence, innocence, justice — nothing affects a prearranged verdict. A bribed jury is blind to everything except the glitter of gold; one packed, deaf to all alike except the crackle of the fires of hatred and revenge. By some strange oversight, the laws of Kentucky (see Criminal Code, Sec. 281), provide that the rulings and decisions of the trial court, in the selection and formation of the jury, are not subject to exceptions

and review by any higher court. Judge Cantrill knew that his decisions in the examination of the talesmen, while unprecedented, would not be reviewed by the court of appeals.

Twelve Democrats sat in the jury-box to try me for my life. Mr. J. C. Porter, one of the jurymen, had been extensively advertised as a Republican. This was a mistake. Mr. Porter is not now, and never has been a Republican. His family connections, his wife's father, brothers, relatives, are Democrats. His Democracy and regularity in voting the straight Democratic ticket were never questioned until 1896, when he voted for McKinley. There was not, therefore, a single Republican on the jury which tried me for my life. As soon as representatives of the Commonwealth were apprised of the fact that Porter, upon one occasion, had failed to support the Democratic ticket, they came to the defense and urged that it should agree for Porter to be excused from jury service, on the ground of lunacy, claiming that he was not in his right mind. To this the defense would not agree, and the jury remained as accepted. This alarmed the prosecution. It had been represented to it that Porter was a Democrat, true and tried. It was a "fake," so something must be done. Something was done. Subsequent pages will show the corrupt influences brought to bear upon Porter.

Judge Cantrill decided invalid the Taylor pardon to me, and Mr. Campbell stated the case for the prosecution and declared that the Commonwealth proposed to prove that Mr. Goebel came to his death as a result of a monstrous Republican conspiracy; that I was one of the conspirators; that the bringing of the mountaineers

to Frankfort on January twenty-fifth, 1900, was a part of that conspiracy; that the fatal shot was fired from the office of the secretary of state; that this fact further connected me with the conspiracy; and, finally, that the militia was called out immediately after the shooting for the purpose of protecting the conspirators from arrest and insuring the escape of the principals. A glance at these assertions will at once disclose the fact that they are practically identical with the charges made by the Goebel politicians on the day that Goebel received his mortal wound.

Nothing sensational had developed during the first week of the trial, aside, of course, from the farce connected with the selection of the jury. During these six days, however, it was made clear to me what influences were engaged in the battle against me. The garbled reports printed in the Democratic newspapers; their efforts to prejudice the public generally against me; the swarm of witnesses who were hovering about the distributors of the reward fund; the liberty on the streets of certain alleged co-conspirators, the attitude of the Court toward my attorneys; his failure to recognize them on the streets; his fining them in court upon the slightest provocation and forcing them to pay the fine immediately or go to jail; his undisguised contempt and hatred for me; the eagerness with which the jury seemed to devour the prosecution's evidence; the manifest unfairness that prevailed, seemingly, everywhere — all these and many other things almost too numerous to mention served to increase my despair and convince me more firmly than ever that I could expect nothing but conviction in the end.

The conspiracy charge at that time was a mere legal

fiction, nor has its status improved with the passing of the years. Under it the rules governing the introduction and exclusion of evidence were extremely loose and pliable; they gave the prosecution almost unlimited advantages. Such an indictment made it possible for the prosecution to introduce scraps of conversations, remarks overheard here and there, sentences separated entirely from all their surroundings, isolated and made pregnant with meaning never intended. Acts and declarations of unknown and unidentified persons, where the witness could by the most elastic use of his imagination connect them with some phase of the alleged conspiracy, were all admitted as evidence. Even the statements made by hot-headed fanatics during the campaign were permitted to go before the jury. The whole procedure was marked with hatred and was directed by the blindest partizan prejudice. In short, the court-room was converted into a medium for the exploitation of the violent statements and recriminations of a political campaign that has never been surpassed in point of bitterness in the history of the human race.

CHAPTER XXVII

A POLITICAL NECESSITY

Trained witness for the Commonwealth — George F. Weaver's sensational statement in regard to the shooting of Senator Goebel — Indictment for perjury, but no prosecution — Finley Anderson's false testimony

During this time, the Goebel press continued to goad its readers to greater indignation against me and induced, in a great measure, the hatred that has pursued me. It seemed fairly to exhaust itself in an effort to make out of my trial all the capital possible, for use during the approaching fall campaign.

The Honorable John W. Yerkes, of Danville, had been nominated by the Republican party for the office of governor. He went before the people on a platform declaring that the courts of Kentucky, under the guidance of their Democratic dictators, were organized "not for trial but to convict." The platform on which his opponent, the Honorable J. C. W. Beckham, stood, has already been quoted. The guilt or innocence of the men charged with Goebel's murder, therefore, formed the issue of the campaign. It was, in truth, the bone of contention. Strange issues, indeed, between two great political parties in a contest for a governorship; but stranger still that such a political issue should be fought out in a court of justice, where the life of a human being was at stake. Is it any wonder,

under such circumstances, that a temple of justice should be transformed into a forum for the exploitation of the angry passions of the fiercest and most bitter campaign and contest for state offices known to any American Commonwealth? It would have been less than human if my guilt or innocence had not been lost sight of in such a struggle for political advantage.

A statement in the *Lexington Herald* at this time throws additional light on the situation. It was independent Democratic in its editorial utterances and had this to say: "A conviction is a political necessity. The present leadership has staked its fortunes on this conviction."

Three entire weeks were consumed by the prosecution in submitting its evidence. It is hardly necessary to add that, during this time, the Goebel press was exerting a most baneful influence on my trial. It found plenty of fuel with which to feed its fire of abuse and vituperation; for the Commonwealth devoted much of this time to the examination of its five brilliant and dazzling star-witnesses upon whose testimony it relied almost entirely for a conviction.

Three of these, Wharton Golden, W. H. Culton, and Robert Noakes, stood formally accused of complicity in the murder and were offering their testimony now in exchange for immunity. It can be easily imagined, therefore, that their testimony was of especial value to the Goebel newspapers. The other two, Finley Anderson and George F. Weaver, were offering their testimony not because of cold-blooded expediency, but for a consideration of cool dollars and cents. Of the "Five Invincibles," as these were banteringly

termed by some at the time, only one (Wharton Golden) remains in the service of his coaches and employers. Weaver, Noakes and Anderson are now publicly-known perjurers. Noakes confessed his perjury, Anderson made an affidavit to his, and Weaver was indicted for his. Culton, after serving the prosecution faithfully for a number of years, finally forged a number of witness claims against the state and forthwith fled to parts unknown to escape arrest and prosecution.

Of all these, Mr. Campbell was the trainer. He coached and examined all, and demanded the credit therefor except in the case of Weaver, who made such a miserable showing that Mr. Campbell, feeling his professional pride assailed, disavowed all knowledge of this witness and declared that he had never seen Weaver until a few moments before he was placed on the witness-stand. Weaver, however, should not be too strongly censured for his failure, for, in truth, he added some needed testimony.

When his name was called, I saw emerge from the waiting-room a man a little below the average in height, and much above the average in weight. He looked very much as though he were a care-free member of the eat-drink-and-be-merry class of human beings.

Upon his appearance, the attorneys for the prosecution stirred excitedly in their seats, and exchanged significant glances. Their attitude indicated that a genuine sensation was about to be sprung. The expectancy communicated itself to the spectators and they craned their necks to see him. The witness, in the midst of this, took his seat on the witness-stand and immediately plunged into his story. He said that

his home was in Denver, Colorado, and that he was in Frankfort, Kentucky, on January thirtieth, 1900, leaving there for Louisville at noon that same day.

Question.—Where were you when Goebel was shot?

Answer.—I was walking down the street by what I suppose is the Capitol building.

He then proceeded to declare that he had never been in Frankfort before and was not acquainted with the city or its streets. He knew, however, that he was on the inside of Capitol Square, and in front of the Executive Building. He stated emphatically that he remembered with distinctness his exact position when the shot was fired. He declared that he was at a point on the west side of the pavement, opposite a hackberry tree, walking in the direction of the gate; that he turned round quickly on hearing the shot, looked toward the building, and saw "what he took to be a man's hand, something like in that position (indicating) on a gun-barrel, taking it back into the window." He said that what he witnessed occurred in one of the windows of the office of the secretary of state, and that, to the best of his recollection, it was the window in the southwest corner of the office. He said that he saw some persons and the man who had been wounded by the shot near the fountain, and that, pausing but a moment, he quickly passed out of the gate and went his way.

From the viewpoint of the prosecution, the testimony of this witness was the most crushing and damaging of any that had been offered. He had established the claim of the Commonwealth that the shot which killed Goebel had been fired from the window of the office of the Republican secretary of state.



Holland Whittaker
Henry E. Youtsey
Berry Howard

Robert Noakes
Captain John Davis
James B. Howard

SOME OF THE OTHERS INDICTED FOR THE MURDER OF WILLIAM GOEBEL

This, in the judgment of the prosecution, was sufficient in itself to ruin the Republican party, and rivet my conviction.

So far as I was myself concerned, I was confident that Weaver had sworn falsely. Noakes, Anderson, Culton and others made statements equally infamous and equally untrue, and placed it beyond my power to contradict them by testimony other than my own, because they said I had made damaging statements to them when alone. I could not even contradict Weaver's testimony by my own.

However, events proved that Weaver's perjury would, after all, be fairly easy to expose. In less than twenty-four hours we were able to establish by a dozen or more reputable witnesses that Weaver was not in Frankfort at all on the day that Goebel was shot, but was in Grayson Springs, one hundred and fifty miles away. Weaver was later arrested at the instance of the defense, and an indictment was found against him charging him with perjury. He was, however, released on the insignificant and obviously inadequate bond of two hundred dollars, and Weaver to-day is still at large, undisturbed and unmolested by those whose duty it is to prosecute him.

When Finley Anderson took the witness-stand, Mr. Campbell held in his hand a rather voluminous written document. He began the examination of the witness, holding him like a charmed bird under the spell of a serpent. When young Anderson, by any mischance, failed to remember all he was expected to testify to, the wily examiner would "refresh" his memory by reading to him from the document to which I have already referred. With this assistance, the witness

would then proceed to answer the question in the manner desired. His air was one of certainty and of frankness. His testimony, as might be expected, was extremely sensational and, among many other assertions he made was one to the effect that I was at his father's hotel in Barboursville, Kentucky, a few days before Mr. Goebel was murdered and there made the declaration that "If we can't get him (meaning Goebel) killed, and it is necessary, I will do it myself!" Proof! The procurer of confessions proved anything he desired. Why should he not, when he had himself prepared the statements to which the witness swore? But later, Anderson, under oath, explained how he was bribed, retracted his testimony and exposed the corrupt methods by which it was procured. (See Appendix A.) The smooth suborner of perjury had so framed the story of Anderson, as well as that of Noakes and other perjurers, as to put it beyond my power to contradict them by any other witness than myself. Noakes, Golden, Culton, Anderson and the rest, testified that their conversations with me had been in private. Realizing how powerless I was to convince the public that these star-witnesses were black perjurers, it is beyond the power of words to express how gratified I was to know the conscience of one had haunted him until he was forced to tell the truth.

CHAPTER XXVIII

THE VALUE OF AN OATH

Robert Noakes in the rôle of a star-witness — Later confesses himself to be a perjurer — W. H. Culton exonerates me after giving sensational testimony — F. Wharton Golden's evidence — Prosecution calls the Goebel press to its rescue

During all the time that had elapsed since my examining trial, which was held in March, the whole county, as well as the entire state of Kentucky, had been kept in a constant state of excitement and expectancy. Sensational stories in inflammatory journals appeared with persistent regularity, in which it was again and again asserted that many prominent Republicans would, sooner or later, be connected with the killing of Senator Goebel. Men high in the councils of the party were thus exhibited repeatedly as possible assassins. Others, who had gained no such prominence, were frequently referred to as possessing guilty knowledge, and among these was Robert Noakes. He was the captain of a military company at Corbin, Kentucky, had been a railroad employee, was a heeler for the Republican party in his own town, and, withal, had led a somewhat reckless life. He had come to Frankfort with the mountain men, and, apparently, had been exceedingly anxious for Republican success. He had talked boldly and had protested vigorously against the attitude of the Democrats in the contests.

He is a man far above the average in native ability and intelligence, but without education. He was looked upon as a man who could be easily instructed and then left to his own ability to carry out his instructions with good results. Naturally such a man played easily into the hands of the prosecution. Almost immediately he became the center of attraction, nor did he permit himself in the few days during which he held the stage to lose any of the notoriety he apparently loved to possess.

When he took the witness-stand, he gazed about him with unblushing effrontery, glanced calmly over toward the lawyers for the defense, rested his eyes a moment on me, and bowed slightly. Then he settled himself more comfortably in his chair and turned his attention toward Mr. Campbell.

Throughout the examination that followed, he seemed to delight in treading on the very frontier of dishonesty, infamy and folly. He was the brightest of Mr. Campbell's galaxy of stars and he proposed to display his brilliancy to the best advantage. He had not been "captured" until July and, though he came into the race of the liars slightly handicapped by this time-difference, he nevertheless made up for it in boldness and effrontery. In truth, Noakes outstripped them all, eclipsed them all, but, in all sustained them and corroborated them.

He asserted under oath that both my brother and myself had endeavored to induce him to procure smokeless powder cartridges with which to kill Goebel. He stated that we had approached him with this proposition prior to January twenty-fifth, 1900, and that, on the morning of the twenty-fifth, my brother had told

him that all preparations had been made for the assassination of Goebel that day. On the afternoon of this same day, he declared that I approached him, saying: "Bob, I understand that you have two men in your company who, if you told them you wanted a certain man killed, would make it possible for you to find his corpse the next morning." He testified further that I said to him at that time that the contests would "not amount to a damn, for, as soon as Goebel is dead and in hell, no other Democrat in the state of Kentucky could hold the Democratic party together as he has."

It was along such lines as these that Noakes related his story. In the end, however, he was forced to admit that he had left Frankfort on January twenty-fifth and that he had no actual knowledge of any plot, if such there were, which resulted in Goebel's death. My attorneys, nevertheless, found it difficult to make much of an attack on Noakes' testimony, and, as a result, the prosecution was jubilant. The *Courier-Journal*, commenting on this fact, said: "Caleb Powers' disappointment over the failure of his counsel to break down the testimony of Noakes was plainly apparent throughout the proceedings to-day, and his discouragement was visible in every line of his face."

But, if I may be pardoned the allusion to a trite expression, "truth crushed to earth will rise again" was exemplified here; for Noakes, this star-witness for the prosecution, some months later prepared a written statement in which he confessed himself to be a perjurer — the most monumental liar of the age. This retraction of all that he had sworn to was given to the public December fourteenth, 1900, and is referred to again in the course of this narrative.

W. H. Culton followed Noakes to the witness-stand. His testimony also was of a sensational character. He stated that he had talked to a Doctor W. R. Johnson, a desperate character, and that the conversation turned on Johnson's plan to end the life of Goebel with nitroglycerin. He said further that he had also talked with many others regarding plans of murder, and had heard from Youtsey's own lips "his slick scheme" whereby Goebel's life was to be taken. He was forced to admit, however, that he, like Noakes, knew absolutely nothing of any actual plot that had resulted in the death of Goebel. He said, in substance, that when he heard the Democratic leader had been mortally shot there was not a man in Frankfort more surprised than he. He likewise exonerated me from all knowledge of the crime, for the following question was asked him and the following answer was given:

Question.—I will now turn to Mr. Powers. State whether you had any conversation with Mr. Powers prior to the killing of Goebel relative to that matter?

Answer.—Never in my life. I never had a conversation with him in regard to the killing. (Vol. III, P. 447, Bill of Exceptions.)

The cross-examination developed the fact that Culton had once been indicted for forgery and had, it is alleged, embezzled one thousand dollars from the auditor's office when he was employed there in the capacity of clerk.

Wharton Golden was another witness for the Commonwealth who possessed an unsavory reputation. However, he is not as bad as he is weak, and his criminal record even showed to advantage when com-

pared with the records of his fellow perjurers. Wharton Golden had been indicted for carrying concealed weapons and for selling whisky in violation of the revenue law, but no graver charge had ever been lodged against him. He is a man of slender frame, possessing a face that impresses one with the weakness of his character, its vacillation and lack of will-power. He was a mere leaf floating on the dark current of events; the first man against whom a semi-formal accusation had been made by Mr. Campbell's mouth-piece, detective Tom Cromwell, and he was also the first man to "confess" a guilty knowledge of the alleged conspiracy to kill Goebel. He was then, and still is, under indictment for complicity in the murder and, like Cul-ton and Noakes, was willing to swear away my life to save his own. But he, like his two associates, was forced to admit that he had no knowledge that Senator Goebel was to be killed on January thirtieth, 1900, much less any knowledge that the fatal bullet was to be fired from the office of the secretary of state.

It is an easy matter to put into the mouths of men utterances that can be contradicted only by the man who is on trial for his life,—and of such material was the evidence introduced against me during the weary days that brought to light this mass of perjured testimony. But, after all, it is a difficult matter to pick men up and place them together like nine-pins in a certain position, in a certain place, and, by evidence, of the character of that introduced against me, prove that they conspired to commit murder or any other crime, when, as a matter of fact, there was not the slightest foundation on which such a lie might be based. The failure of the prosecution to connect

me with the murder was clearly shown by the witness, when, in answer to a question, Golden replied: "I was expecting nothing but a fight in the legislative hall; that is the way I expected Goebel to be killed all the time."

After three long and weary weeks of suspense, perjury and unjust rulings, the prosecution brought its case to a close. Knowing that it had made but a weak support of its charge, it immediately called upon the Goebel press again to come to its rescue. The response was immediate, although somewhat ill-advised in the form it assumed. The claim was advanced that, if I were not guilty, I was at least in a position to know who was guilty, and that it was my duty to "point out the real criminal." Accusations were never made with more bitter vehemence, nor with more reckless disregard for common justice and human life than were made by the newspapers which served the Democratic interests. In the desperation of the prosecution, it called upon me through its mouth-piece, to do that which I was powerless to do, and which it had failed to do — expose the guilty. It adopted the French law and proceeded on the theory that a man is guilty until he proves himself innocent.

CHAPTER XXIX

MY DEFENSE AND MY CONVICTION

Judge Faulkner's statement for the defense—My testimony for myself—Cross-examination by Lawyer Campbell—Address to the jury—Verdict of guilty, with penalty of life imprisonment—Juryman Porter—My card to the public

My defense was begun by Judge H. C. Faulkner's statement of the case to the jury. "It is not," the speaker declared, "by the choice of the defense that this trial has been made a political rather than an ordinary criminal trial; but the Commonwealth has throughout the procedure followed this course.

"We will demonstrate," he continued, "that Finley Anderson is a liar for revenue only; that W. H. Culton was put under the thumb-screw and forced to say what the gentlemen on the other side wanted him to say; that Noakes, the greatest liar in history, entered into a fraudulent contract to have himself arrested as a "blind" and then came here to sell Caleb Powers' life-blood for gold and for immunity; that Wharton Golden showed a roll of money in Barboursville, and said that it was a part of that one-hundred-thousand-dollar reward, and that in his testimony he lied wilfully and deliberately; that there has been a carefully planned conspiracy of diabolical character conceived and put into

execution for the purpose of sending this man to the gallows by means of perjury and subornation of perjury."

After Judge Faulkner had concluded his excellent statement of my case, it became my turn to take the witness-stand in my own behalf. I knew I should have to give an account of my every word and act during a protracted and heated political campaign and during the struggle for supremacy that followed it. I was to tell not merely what I had said and done, but what others had said and done as well. I realized that it was a tremendous task. I was fully aware that it devolved on me to remember all the details of the testimony offered by the prosecution touching my conduct, speech and whereabouts, and be able at all times to attack this mass of evidence in its most vulnerable points. I knew, moreover, that the fire to which I would be subjected would be unmerciful; and that the slightest discrepancy that might escape my lips would be magnified, distorted and construed into an admission of guilt.

Nevertheless, I felt equal to the task. My innocence sustained me. That my confidence was not misplaced, even the *Courier-Journal* admitted. It said: "One of the leading attorneys for the prosecution, in speaking to-night of Powers' testimony, said: 'The prisoner is a shrewd man. He is a thorough diplomat, and in every sentence he utters there is an appeal to the jury. . . . The attorneys for the defense and the friends of the prisoner say he has told a plain, straightforward story. They say he has practically acquitted himself of any implication in the crime; and that he will bring abundant proof in support of every assertion he has made.'"

Mr. Campbell conducted my cross-examination, and I will quote an independent Democratic paper, the *Evening Post*, of Louisville, to show how the public regarded Mr. Campbell's unprofessional conduct while he submitted me to the fire of his questions:

"The expectation of a further exhibition of Campbell's tactics helped to swell to-day's crowd. People here have learned that in the art of injecting argument into examination, of veiling innuendoes, of inference and insinuation under the guise of questions, and of putting his own words into other men's mouths, Campbell is a grand master. But not one inch did he shake Caleb Powers in the long and severe cross-examination which went on during the forenoon. He never once lost his head, nor did he allow Campbell to trap him into admissions that he did not make. So amply able to take care of himself did the prisoner prove, that ex-Governor Brown found few occasions to object to Campbell's interrogations, although most of them were couched in objectionable language. Throughout the morning, Powers remained cool and calm, and his replies seemed to breathe sincerity and truth. At times, the inquiry was turned by Campbell into a trial of wit, in which he pitted his shrewdness against that of Powers. In every such instance, Campbell suffered. Powers made no flippant rejoinders; he attempted no evasion. He met each question fairly and squarely, and his answers were always full and sufficient."

After my testimony was completed, my attorneys introduced over one hundred witnesses in my behalf. Fully two weeks were required to hear this testimony. I shall not give it here. I omit it, and, thus far have made it a point to mention only casually the evidence

submitted by the prosecution, because, later, I made an argument in my own behalf, reviewing all the evidence at length, and this argument is presented in the accompanying appendix. I will say, however, that the testimony for the defense not only sufficed to prove my innocence, but to establish, as well, the perjury of many witnesses for the prosecution.

The jury was taken to the scene of the tragedy and carefully escorted about the points touched upon by testimony in the trial. Upon its return, the court instructed the jury. The instructions under which it was called upon to consider the evidence in the case in order to reach a verdict were "bloody" in the extreme. In truth, after hearing them, had the jury failed to find me guilty, it would almost have been in contempt of court. The argument for the defense was then begun, Judge Sims leading off in a persuasive and logical address. It was followed by Colonel J. K. Hendrick, who made a strong plea for the prosecution. The Honorable George Denny, of Lexington, Kentucky, followed in turn, delivering a sledge-hammer argument of great force and convincing power. Mr. Victor F. Bradley of Georgetown, Kentucky, next spoke for the prosecution, making a plausible speech. He was followed by Judge James H. Tinsley, of Barboursville, for the defense. Tinsley is a mountain lawyer and surprised everybody by his bold and vigorous logic. B. B. Golden followed for the prosecution, and Major W. C. Owens, for the defense, came in turn. Owens was not surpassed in brains or force of logic by any man on either side of the case. Tom C. Campbell spoke after Owens, delivering a semi-political speech, full of dangerous insinuations and innuendoes.



ROBERT FRANKLIN, PROSECUTING ATTORNEY IN ALL
THE CASES, INCLUDING THOSE OF BOTH
HOWARD AND MYSELF

Ex-Governor Brown spoke next with great vigor and was followed by Robert B. Franklin, a dramatic actor-orator, who closed the Commonwealth's argument. His remarks were at times warmly applauded by friends of the prosecution; but of this applause and demonstration the court took not the slightest official cognizance.

The jury, at the conclusion of Mr. Franklin's argument, arose from its benches, filed slowly into the petit jury-room, and the door was immediately locked behind it. A deputy sheriff stationed himself at the entrance and guarded it against all comers. At last my case was in the hands of the twelve men who were to determine my fate! The eyes of every one in the court-room were turned upon me. I shall not voice the feelings that filled my breast at this trying moment, but, instead, shall permit some of the spectators to describe how I appeared to feel. The *Courier-Journal* said: "It was apparent from Powers' expression that he had no fear of conviction and was perfectly cool and deliberate."

The *Louisville Herald* said: "Powers was as cool and calm as ever. Verily, the prisoner must be a man of iron." The stuff of which heroes are made is in us all. In emergencies we all prove it. It is a great thing to have a clear conscience, to be patient and serene when wrongly accused, and to have your feet so firmly planted on the foundation of truth that you can meet calumny with silence, and slander with a smile.

In less than an hour after the jury retired, there came a rap on the door of the room where the body was holding its deliberations. The door was opened,

and, even more slowly than it retired, the jury filed into the court-room.

"Have you made your verdict, gentlemen?" asked the court.

Two of the jurors immediately replied, "We have."

The paper upon which the finding was written was handed to the clerk. It read:

"We, the jury, find the defendant guilty as charged and fix his punishment at imprisonment for life in the state penitentiary. I. G. Stone, foreman."

What emotions filled my heart no pen can write, no language can describe! By that verdict, I was branded by my state and by my fellow men as a murderer. The awfulness of its meaning fell on me with crushing force. In a moment, however, it flashed through my mind that such a verdict could not stand, that it could not be final.

While sorrow with its dark wing covered me with deepest gloom, the prosecution and its friends on the other side of the court-room were receiving and offering the most effusive congratulations. The truism that the joys of one are erected upon the ruins, misfortunes and sufferings of another, was exemplified here. As Arthur Goebel left the court-room he received the congratulations of the jurors who had just returned against me the verdict of guilty. The *Courier-Journal* commented thus on the incident: "On his way down the steps leading from the court-room, Mr. Arthur Goebel was met by several of the jurors, who shook his hand. Among them was W. O. Tinder. Mr. Tinder broke down in tears when he took Mr. Goebel's hand, and then walked away, being too deeply affected to speak." Was a man, whose feelings were

thus so sensitively alive to the circumstances of Mr. Goebel's tragic death, fit to serve upon a jury which was trying the alleged murderer?

It was generally believed that improper influence had been brought to bear on Porter, one of the jurymen. Republicans said generally that he had either been bribed or intimidated. The fact is, however, that the latter only was true. During the progress of my trial, his wife was permitted to have a secret interview with him. She conveyed a letter to him from his father, stating that if he stood for acquittal, although convinced of my innocence, he would be indicted for perjury by reason of certain statements made by him in his *voir dire* examination. Besides this, the letter further informed him, that, to hold out for my acquittal would be to place his own life in peril and his property in jeopardy. This the juror himself divulged to James B. Finnell, of Georgetown, Kentucky, after my trial was ended. It was also observed that, during the progress of the argument, Mr. Campbell warned Mr. Porter in a most personal manner of the evils that might befall him were he or any one else to "hang" the jury. Porter told Judge Finnell that he believed in my innocence, but also believed that he would not only be convicted of perjury if he cast his ballot for acquittal, but would also be forced to submit to the loss of his standing in the community where he resided, the ruin of his business, even if he escaped with his life. "It is a shame that I did not stand for Powers' acquittal," said he, "but I have a wife and children to support, and I knew it would ruin me if I did."

After the verdict in my case was read, I was taken

back to the jail, heavily guarded, closely watched. I at once issued the following card:

GEORGETOWN, KY., August 20, 1900.

To the Public:

I am asked my opinion concerning my trial and the verdict of the jury. Could there be but one opinion? Could any fair-minded man or woman of this state have but one? That one of the greatest judicial farces known to history has been enacted here in my trial under the forms of law, no well-informed man can doubt. Innocence is no shield with a hundred thousand dollars and the methods of Campbellism against you. The rectitude of one's past life counts for naught. They say Taylor was guilty because he was at his office; and that I am guilty because I was away from mine. This has been throughout a political trial, for political purposes, and no greater mistake has been made by the Democratic party, since it robbed us of the offices to which we were fairly elected by the people. There are good men and noble women in the Democratic party — and many of them. These do not indorse the theft of the state offices. Many more will not indorse this mockery of a trial, this prostitution of the courts of justice for certain ends. From the beginning of the Taylor-Goebel campaign until now, I have stood, with what little merit I have had, for the rights and liberties of the people. That is my crime. That is the offense I have committed. That is the only thing proved against me; and that I swore to myself in my testimony. I have never had, nor have I now, any apology to make for being true to the trust imposed upon me by the majority of the voters of the state. History will draw its dark lines around those who have outraged me, disgraced the judiciary and blackened the reputation of the state.

I am, very respectfully,

CALEB POWERS.

The late Colonel W. C. P. Breckinridge, in the *Morning Herald*, aptly expressed the aim and object of the prosecution of my case when he said:

“It is evident that the victims were first selected,

and not on any grounds of suspicion or any evidence of guilt, but for other reasons; and the victims having been selected, then the detectives were turned loose. Confessions were secured, men were arrested, threatened, imprisoned, transported from their homes, held in close confinement away from their friends. Bribes, promises, threats, imprisonment, and every inducement were used to extort statements, coerce, or by confessions fix the case. Upon the testimony actually admitted, no intelligent man, who is not the victim of blind prejudice, can doubt that the guilt of Caleb Powers was not proved; and upon the entire case we presume there can be no serious doubt that an innocent man has been illegally convicted under the forms of law; and it is the utmost stretch of that respect for the courts of the Commonwealth which permits the use of the phrase under the forms of law."

CHAPTER XXX

AFTER THE VERDICT

I am again taken to the Louisville jail — My reflections on the way — I find myself a victim of injustice, with no prospect of redress — Charges and countercharges preceding the trial of Jim Howard — Summary of the testimony — Howard is convicted of shooting Goebel and is sentenced to death

After the court had overruled my motion and grounds for a new trial, which my attorney had prepared in advance of the verdict, it made an order transferring me to the Louisville jail for safe-keeping. Mr. James W. Reid, the jailer at Georgetown, had shown me every possible courtesy and was an open, outspoken champion of my cause. He was an anti-Goebel Democrat of the most pronounced type. I was again handcuffed; two strong men took me into custody and escorted me to the depot, where I was placed on the Midland train for Frankfort.

Events had followed one another so rapidly; I had been hurled through so many vicissitudes and painful ordeals and at so rapid a pace, it seemed, that I had found little time for reflection and but small opportunity to pause and take my bearings, as it were. The storms of passion and hatred had for six weeks lashed me so furiously and incessantly that my moments were occupied almost wholly with consider-

ation of the exigencies that each day brought forth. I had, therefore, no time for reflection. Neither the friends interested in my welfare nor I myself had found it possible to pause long enough either to prepare for the future or to weigh with any degree of intelligence the result of the adverse verdict that had been found against me. I was in the center of the maelstrom and the angry currents stormed incessantly about me; it was with difficulty that I held my head above the waters. It was, therefore, with a feeling of relief that I began this journey. En route to Louisville I should have at least a few hours that I might devote to reflection and to consideration of my future affairs. The train steamed away, with many kind and earnest words of encouragement from my friends still ringing in my ears.

I settled myself in a seat by the open window of the car and for a few moments enjoyed the southern breeze that fanned my cheeks. The sun was sinking in the west, its rays warmly flooding the country through which we passed. Slowly it descended until it rested for a moment on the rim of the horizon and then, lingering but a second, kissed the world good night. A solemn stillness came with the fall of the curtains of night. Only the noise of the train was heard.

But to the things about me I gave little heed. The past rose before my mind's eye like a hideous nightmare; my brain vainly struggled to contemplate calmly the future that lay before me. My position, viewed from all points, was one to fill the stoutest heart with despair and to break the spirit of the strongest man." My life, from earliest childhood, had been one

of struggle. I began to face the hardships of life as a boy; at a most tender age I had taken upon my shoulders more than my fair share of the burdens and duties of life. I had fought bravely and persistently for every inch of vantage ground; slowly I had risen from a position of obscurity to one of some little prominence. Now, however, my ambitions were but empty things, my good name was dragged low in the mire of disrepute and infamy, my prospects in life were blighted and I was being conveyed from place to place, a prisoner, chained like a beast, guarded day and night. I thought of my brother, at that moment a fugitive, not from justice, but from injustice. I thought of my aged father and mother. They had lived for their children and had done all within their power to make them the best men and women they were capable of becoming. Were they now to be made to suffer as only parents can suffer because, forsooth, these children had entertained no thought more evil than a laudable ambition to improve themselves and their station in life? It all appeared to me so horrible that I was scarcely sure of my own identity.

But on every side of me were evidences of the terrible reality of my situation. The trainmen passing through the coach, the passengers getting on and off, men and women from every walk of life and little children, gazed at my shackled hands—some curiously, some insolently, and some pityingly. Where would it all end? The prosecution, having convicted me once, could not afford to fail in convicting me again, in the event of a new trial, since my guilt had become a Democratic article of faith—a plank in the party platform. This, and a thousand other thoughts flashed

through my mind; I surveyed for a moment the disadvantages under which I labored. They seemed too many to overcome. Yet, withal, I held firmly to the belief that justice and right in the end would triumph. I believed then, as I believe now, that the old adage that murder will out was not framed by an idle brain; I believed then, as I believe now, that there is no nook or corner in this broad world of ours so hidden or so remote that the murderer of Senator Goebel can continue to conceal the secret of his crime there. Sometime, sooner or later, the criminal will be known. And I felt, too, that I owed it to my father and mother, to myself, to my state and to my party, to continue the fight for my liberty whatever the odds might be against final success.

The conductor interrupted my meditations by calling out "Frankfort," and I found myself, when the train had stopped, in the midst of the usual throng that assembles to meet any one who might prove an object of interest or curiosity to the public. I was taken without delay to the county jail, one of Hawthorne's "black flowers of civilization" — the crowd following closely at my heels. The next morning the journey to Louisville was resumed. Arriving there, I was hurried at once to the county jail, where, much to my surprise and pleasure, and much to the chagrin of certain Goebel partizans, jailer John R. Pflanz gave me the best quarters at his disposal. He treated me, also, with all the consideration that an honest and humane gentleman always exhibits toward those who are unfortunate enough to be at his mercy.

Now that the excitement following my conviction was somewhat abated, I settled myself to study and

work. I found that by keeping myself always employed, I was able to forget to a certain extent the disappointments that harassed me. I discovered, also, what doubtless many others before me have discovered, that happiness does not depend so much on one's environment as on one's disposition. I buried myself deep in my books, and, while I can not say that I was at any time really happy, at least I lessened my misery.

It will be remembered that the cases of Henry E. Youtsey, Dick Combs, Holland Whittaker and Captain John Davis, as well as my own, had been set for hearing at the same special term of the Scott circuit court. I now learned that the cases against Combs, Whittaker and Davis had been continued, at the instance of the Commonwealth, to the October term. Whittaker, Combs and Davis were allowed bail, which they promptly executed. Youtsey feigned illness, his case was continued, and he was transferred to the Frankfort jail for safe-keeping. The release of the others, even under bond, was in the nature of a tacit admission on the part of the prosecution that they were not implicated in the murder of Mr. Goebel. Nevertheless, Whittaker had been confined continuously in the jails of the state since January thirtieth, 1900, Combs since April and Davis since March tenth, of the same year. It was said by the friends of these men that the prosecution, having failed to force a confession from them by "sweating," or other process, was compelled, for political reasons, to liberate them; otherwise its failure either to try them or grant them bail might, in the forthcoming campaign, prove a boomerang to Mr. Beckham and the Democratic party.

The campaign, in truth, was assuming an interesting

stage, and the issues between the two great parties began to be more sharply drawn. The release of the three men, consequently, was well-timed. Politicians of both parties made the most of the action. It was well in keeping with the subjects that were then being most broadly discussed by the speakers on both sides — the assassination of Goebel, the alleged Republican conspiracy, and the conduct of my trial by the prosecution. The lesser lights of both parties took their cues from the leaders and from every rostrum in the state these topics were dwelt upon, and they have been dwelt upon ever since.

The Goebel leaders asserted with emphasis that they had established the existence of a Republican conspiracy by the conviction of one of the arch-conspirators. The Republicans, on the other hand, took the position that the only conspiracy that had ever existed was the one on the part of the Goebel partizans; set on foot to jeopardize the lives and liberty of innocent men for the mere sake of political advantage.

As these charges and countercharges flew back and forth, the time for Jim Howard's trial was rapidly approaching. • He had been at his home in Clay County up to the time when he was formally indicted for the murder of Senator Goebel, when he immediately surrendered. On Friday, September seventh, both the Commonwealth and the defense announced themselves ready to proceed with the trial, and the work of selecting a jury was at once begun. The means employed in summoning and selecting the talesmen resulted finally in the impaneling of a jury of twelve Goebel Democrats, tried and true, to hear the case.

The defense contended that Howard was at the

Board of Trade Hotel at the moment when the fatal shot was fired—a distance of several hundred yards from the scene of the tragedy. The Commonwealth, of course, contended the contrary. It was, therefore, as to the whereabouts of Howard at the time Goebel was shot that the real battle was fought in the court. The prosecution made every effort to prove that Howard was seen standing on the west steps of the Executive Building, with a gun in his hands, a few seconds after the shooting of Goebel and that, a moment later, was seen to vault over the back fence of the Capitol grounds.

The prosecution, in short, sought to establish the theory that Howard fired the fatal shot and then immediately took up a position at the entrance to the Executive Building to guard against the approach of any one who might be seeking to apprehend Mr. Goebel's murderer. The defense maintained that, instead of coming to Frankfort to commit murder, Howard had journeyed thither to seek at Governor Taylor's hands a pardon for the killing of George Baker, who had been murdered several years before. It maintained, moreover, that Howard had arrived in Frankfort less than an hour before Goebel was shot, that he had repaired immediately to the Board of Trade Hotel, and that he was standing in the lobby of this hostelry when the Democratic leader fell, mortally wounded. It contended that he could not and did not know of any alleged conspiracy to kill Goebel or of any alleged conspirators planning to encompass his death.

The prosecution introduced evidence to show that Howard had been seen standing on the steps of the Executive Building soon after the firing of the shot

and that he was seen to leap over the fence back of the Capitol grounds. But there was inconsistency here, for some witnesses claimed they saw him in the rear of the building before he was alleged by others to have been seen on the steps of the Executive Building. Those who claimed to have seen Howard on this occasion asserted that he wore a short, stubby black mustache. The defense, however, proved that Howard not only was at the Board of Trade Hotel, but that he was clean-shaven at the time of the murder, and, in truth, had worn no mustache for more than a year previous to January thirtieth, 1900. The defense further proved that Howard did not know Taylor, Finley, Youtsey, my brother or myself at the time of the tragedy and, therefore, could not and did not enter into any conspiracy with any of us.

The trial continued in progress three weeks. At its conclusion the jury found a verdict of guilty and sentenced the prisoner to death.

I wish to emphasize the fact that Howard was charged with being a principal in the murder of Goebel with Taylor, Finley, my brother, myself and others as accessories, yet throughout the long trial there was never a word of evidence presented even tending to show that we were associated in any manner whatsoever in a conspiracy of any kind. On the contrary, it was shown by most convincing evidence that Taylor, Finley, Youtsey, my brother and I were not acquainted with Howard at the time of the murder. Personally, I had never laid eyes on Howard until we had both been transferred to the Louisville jail, which was not until after both of us had been convicted.

Another strange feature that marked his case and

mine was that the prosecution had urged against me as a point greatly to my disadvantage the fact that I had brought the large mountain crowd to Frankfort. It will be remembered that the prosecution asserted that this was a part of the conspiracy which had for its end Goebel's death. Still, when the principals were indicted, no man who came down with the mountain crowd was among them. Neither James Howard, nor Berry Howard, nor Youtsey, nor Whittaker, nor Combs had anything whatever to do with the bringing of the mountaineers to Frankfort, and none of them was with the crowd or associated with it in any way. Nevertheless, I had been convicted because I brought the mountain crowd to the capital, James Howard had been sentenced to be hanged for firing the fatal shot, but there had not been presented a single word of testimony that even remotely connected the two events, or connected Howard with me.

CHAPTER XXXI

TRIAL OF HENRY E. YOUTSEY

Campbell's deftly woven statement — Hunted look of the defendant — His fierce denunciation of Arthur Goebel and paroxysmal display of emotion — His illness and his appearance in the court-room — Jury returns verdict of guilty, with imprisonment for life

The time was now rapidly approaching for the trial of Henry E. Youtsey. It was evident, as the day for the hearing came nearer at hand, that Youtsey's attorneys were not ready to proceed with the case. There were, perhaps, many reasons for this. Chief among them was the strong belief in the public mind that the defendant was to some extent connected with the commission of the crime charged against him. Another, no doubt, was that the jury before which Youtsey was to be tried would be selected with a view to making his conviction a certainty. In the effort to delay the trial the sparring was vigorous on both sides, but, as far as the defense was concerned, without avail. Recognizing that delay could not be obtained, Youtsey's counsel turned the full force of its batteries on the special venire that had been summoned by the court in the hope that a "packed" jury might be avoided. But the attorneys sought in vain to have the names of the jurymen drawn from the wheel in the regular way. During the discussion of this matter,

bitter feeling between the court and the lawyers employed by the defense was more than once made manifest. The court ruled against Youtsey, and the jury was soon selected from the special venire that had, as in my case, been summoned from that section of the county where rankled the fiercest hatred against the men charged with the murder of Goebel. It is needless to add that the entire jury was composed of the most pronounced Goebel Democrats.

Mr. Campbell, with the usual detestable cunning for which he was notorious, made the opening statement for the prosecution. His declaration was couched in terms that indicated a strange combination of villainy and much ability. Adroitly and skilfully he recounted with fascinating detail the strange events and circumstances upon which the prosecution relied for the conviction of the prisoner. He followed closely the damning thread of testimony until the jurors seemed almost to feel that the wily attorney was tightening the noose about the neck of the unfortunate Youtsey. His alleged scheme to kill Goebel from the office of the secretary of state, his presence on one occasion in that office with a gun, the purchase of the steel cartridges from a Cincinnati firm, his connection and the alleged plots with the mysterious Doctor W. R. Johnson, his significant talk with Walter R. Day to the effect that he could settle the contest with three hundred dollars, the bringing of the men from the capitol red brick building to the Executive Building just before the shot was fired (a theory which the prosecution later abandoned), and lastly, the alleged confession of the prisoner at the Franklin County jail—all these were woven with spider-like deftness into the statement pre-

sented to the jury by the profoundest "shyster" in America.

The face of the prisoner was pale and pinched; in his eyes there was a vacant expression. He had all the appearance of a hunted wild animal driven at last to bay. His wife, a brave little woman with a heart as sweet and gentle as her fortitude is strong, together with relatives, sat by his side.

In the beginning, the case seemed to progress in anything but a favorable light to the prosecution. The attorneys for the Commonwealth seemed to be discouraged. Witness after witness was introduced, but nothing of importance was developed by their testimony. The attorneys for the defense were elated, but, like the confidence of Napoleon before the battle of Waterloo, their assurance only presaged the horrible reverses that were soon to overtake them. The defendant's attorneys had been assured repeatedly by their client that he was innocent; his wife and his other relatives had received the same assurance. It was only natural, therefore, that Youtsey's lawyers as well as those more intimately concerned in his fate should feel at this stage of the trial such confidence in its outcome.

The jury, as in the other cases, was conducted to the scene of the tragedy and permitted to view the buildings and grounds. When court was again convened, following this excursion, Arthur Goebel, brother of the murdered man, was called and immediately took the stand as a witness. In the meantime, however, all who had accompanied the jury to Frankfort had observed that the prisoner, who also had made the journey, was visibly affected as he passed through

the corridors, basement and offices in the Executive Building. Doubtless his emotion was due to that sentiment of the soul which clusters about past associations.

Arthur Goebel, who resembles his dead brother in physique and facial expression, took the witness-stand in the midst of an almost breathless silence. The spectators were eager with expectation. The witness spoke clearly and distinctly, and, almost with the first words that fell from his lips, there came a most sensational turn in the case. He began to relate a confession which, he asserted, Youtsey had made in his presence while in the Franklin County jail. He gave, in part, with considerable dramatic ability, the details of this alleged statement, but all that he said was as nothing compared to the scene that interrupted his narrative.

The prisoner suddenly arose from the chair where he was seated beside his wife and relatives, and pointing his finger at the witness, launched forth a fierce denunciation of Goebel and the statements he had made.

The court-room, in a moment, was the scene of excitement and confusion. Youtsey, apparently, lost all consciousness of his surroundings. He stood where he had risen, trembling with emotion, shouting in a delirium of excitement, his long arm still pointing in the direction of the witness. He spoke rapidly, incoherently; his statements were those of a demented man. Suddenly, in the midst of his denunciation, he lost all control of himself; he seemed to be seized with a paroxysm of madness. Deputy sheriffs rushed to his side, seized him by his arms and body and struggled to restrain him. The spectators in the court-

room fled, panic-stricken. Court was adjourned, while the demented man still struggled with those who held him in restraint.

The following morning, when court was again convened, Youtsey's attorneys stated that he was in no condition to make a resumption of the trial possible. Throughout the night he had been held under restraint, apparently growing but little calmer as the hours wore away. Court was again adjourned and, in the days following, other adjournments were ordered from time to time while Youtsey remained too ill to attend the sessions.

From the beginning, however, the attorneys for the prosecution were suspicious of the prisoner, and, after several days had elapsed, they charged that he was "shamming" and insisted that the trial continue. The court finally consented. Youtsey, in the interim, had been removed from the jail to a jury-room in the court-house where, night and day, his faithful wife and his friends attended him. He was now brought into the court-room, apparently more dead than alive, and the trial continued to a conclusion without further interruption.

The state made out a strong case against the prisoner, proving that he was seen to run down through the basement of the Executive Building in a panic-stricken condition after the firing of the shot that killed Goebel. It established the fact, also, that Youtsey had ordered smokeless powder cartridges from Cincinnati on January twenty-second, that he had threatened to kill Goebel and that he had talked with various individuals over divers schemes to do so. Colonel L. J. Crawford, half-brother of the accused, de-

livered the opening statement for the defense. He was calm and deliberate in his denunciation of the methods pursued by the prosecution, and outlined with convincing logic the case that the defense proposed to present. Replete with dramatic scenes, the trial was yet to develop another. Youtsey, pale, thin-faced, was brought from the jury-room where he had been confined since his removal from the jail and was borne into the courtroom on a stretcher. Question after question was put to him, but no response fell from his frozen lips. He lay on the cot before the jury, apparently unconscious and oblivious of his surroundings. He did not testify, and the defense, under the circumstances, made the best fight it could.

It was not long after this scene that the hearing of evidence closed, and the arguments were begun. The speeches of the opposing counsel were extremely bitter. Colonel R. W. Nelson spoke five hours for the defense, arraigning Mr. Campbell fiercely. For denunciation few speeches ever heard in a court-room could equal this diatribe. He analyzed Campbell's career as a lawyer, flaying him unmercifully and personally charging him with almost every offense in the criminal list. Campbell was seated with the other attorneys for the prosecution when the terrific indictment began, but, as Colonel Nelson progressed in his fierce denunciation and the torrent of language became more severe and caustic, Campbell withdrew to one of the jury-rooms where, it is said, he gave way to uncontrollable feeling.

The jury retired, and remained out but a few moments. It returned, presenting a verdict of guilty, sentencing the prisoner to confinement in the peniten-

tiary for the term of his natural life. A short time after the conclusion of the trial, Youtsey recovered and seemed to be as well as before.

Thus ended a trial which, during its progress, was replete with incidents more dramatic than any that fancy might have invented or that fiction recounts. Not a witness introduced, either by the prosecution or by the defense, even in the remotest manner connected Youtsey and myself.

CHAPTER XXXII

A REPUBLICAN JUDGE ELECTED

Confessions by Anderson and Noakes, admitting they were bribed — Youtsey signs an affidavit exonerating me — I am encouraged by a change in the political complexion of the court of appeals

It was not long after the verdict in the Youtsey case before a fresh impetus was given to the discussion of the Goebel tragedy by the avowal of one of the state's star-witnesses against me that he had perjured himself on the witness-stand. The man who at this time found that his conscience had got the better of him was Finley Anderson.

He stated to one of my friends in Newport that he was weary of the double life he was leading, and ashamed of the wrong he had done me. He declared that, for thinking of it, he was allowed neither peace of mind nor rest of body. "I want to see Powers' people," he said, "and tell them all I know. I can show them that he was convicted by lies, and that money was paid for the evidence that was offered against him. I got some of it myself."

Anderson then came to Louisville and placed himself in communication with one of my attorneys. Later, with this lawyer and other friends, he repaired to the Galt House, and on October thirtieth, made an affidavit in which he admitted he had perjured him-

self, and set forth in detail how he had been paid by Arthur Goebel, T. C. Campbell and Justus Goebel for the testimony that he swore to at my trial. This remarkable statement is set forth in its original form in the Appendix.*

In my most hopeful moments, however, I had never hoped to obtain a confession from Robert Noakes, in which he, like Anderson, would admit that he lied. But, one day in December, I received a letter from Noakes, posted at Vandercook, Illinois, asking that a meeting be arranged between himself and some one of my counsel.

How my heart leaped with joy! I knew intuitively that he had at last weakened and had determined to repair the wrong he had done me.

The meeting was arranged without delay and was scheduled to occur at Danville, Illinois. There Noakes made a statement which in itself is sufficient to make every lover of justice and truth turn sick at heart. It, alone, was enough to establish before the world my complete innocence and make clear also, even to the most biased judge, by what hellish devices I had been convicted.

Noakes' statement related how it had been arranged by Campbell and others interested in the prosecution that he should be arrested on a charge implicating him in the murder of Goebel and how, in substance, after this arrest, he was to turn state's evidence. He recounted how he had been plied with liquor until he was incapable of thought and wholly oblivious of his surroundings. He asserted that when he took the witness-stand in my case he was still under the influence

* See Appendix A.

of liquor. He told, also, how in various conversations with Campbell, the latter admitted that he had bribed other men, and not only bribed Noakes, but induced Noakes to bribe others. In short, his affidavit laid bare the whole vile scheme to secure my conviction at any cost, to secure the conviction of other men regardless of the expenditure required and the crimes involved. Noakes' statement in its unabridged form is added in the Appendix * where, I dare say, it will stand as one of the most unusual documents of the kind ever recorded in any case before a bar of justice.

In the meantime, I had also become convinced from Youtsey's actions and conversations in the Louisville jail, where he and Howard had been transferred to escape the possibility of mob violence, that he did not intend to fight his case further. In other words, I became convinced that he intended to accept his sentence. This possibility alarmed me. He had never testified, but he had been offered immunity for his testimony. Did this attitude on his part mean that he was guilty of the murder of Goebel and would not, therefore, risk another trial? Or did it mean that he intended to become a witness for the prosecution in exchange for his liberty? In the latter event, it went without saying that he would repeat any story that might be placed in his mouth. Whether he was guilty himself I did not know. I did not know whether he could give any evidence truthfully that would implicate any one, but I did know that he was in a position, if Campbell continued his former tactics, to become a most dangerous star-witness. I knew, moreover, that even his determination to accept

* See Appendix B.

his sentence would in itself be taken as a tacit admission of his guilt. I knew, also, that the prosecution had striven mightily to find some connection between Youtsey and myself. This fact led to the fear that Youtsey, who had weakened already, might be induced to weaken further and, if pressed by the wily chief of the prosecution's counsel, make a statement that would, though perjured, prove a menace to my liberty. Then, also, I thought of what horrors might be prepared for Youtsey at the state prison where, forced to submit to tortures that would break the spirit of any man, he might be promised relief in exchange for any testimony that might be devised for use against me.

I resolved, therefore, to exert myself to the utmost to obtain a statement from Youtsey before this threatened calamity could fall upon my head. I approached him and he readily agreed to my demand, merely stipulating that he first consult with his attorneys. This was right and proper and met with no objection on my part. Letters were immediately exchanged between Mr. Kinkead, my attorney, and Mr. Crawford, Youtsey's counsel. Following this correspondence, Youtsey made an affidavit in which he declared that he knew nothing whatever incriminating against me.

It is beyond the power of human pen to describe the joy I felt when I found that I had not only come into possession of confessions from Anderson and Noakes, admitting their perjury, but had, as I thought, fortified myself against any possible perjury on the part of Youtsey.

During this time, the campaign between Yerkes and Beckham had drawn to an end, but the race had been so close that the final result was in doubt for two days

following the closing of the polls. However, when all the returns were in, they showed that Beckham had received a plurality of three thousand five hundred and eighteen, but that he had run four thousand five hundred and eighty votes behind the presidential candidate, William Jennings Bryan. The Republicans claimed that tactics were employed by the Democrats to prevent many voters favorable to Mr. Yerkes from casting their ballots. A second contest, therefore, was freely discussed, but was eventually abandoned, although the Republicans never conceded that Mr. Beckham had been fairly elected. Nevertheless he would serve as governor of the state until December, 1903.

The result of the election, however, afforded me some cause for rejoicing. While the governorship had been lost, an appellate judgeship had been won. Up to this time, the Democrats had held a majority in this court. The election of Judge O'Rear now gave the Republicans a majority of one, the court standing four to three in favor of the Republicans. I felt then that the election of Judge O'Rear was to me a godsend; and future events will show that I was not mistaken.

On February fifth, the day before the time set for hearing the motions in the Youtsey case — one for a new trial and the other to inquire into his mental condition — he was transferred to Georgetown, and from thence to the state prison at Frankfort. His attorneys had dismissed both motions; he desired to accept his sentence. My fears were thus confirmed, but I congratulated myself that my forethought had made it possible to save myself now from any contingency that might arise from this move. I was, at the same time, transferred to the Frankfort jail.

CHAPTER XXXIII

A NEW TRIAL GRANTED

Four Republican appellate judges grant Howard and myself new trials — Colonel W. C. P. Breckinridge's arraignment of the Democratic judges — Continuation of the prosecution's "Hang and damn" policy — Captain Ripley's acquittal — Judge Cantrill's famous charge to the Grand Jury.

For some time I had been daily expecting the decision of the court of appeals. There was nothing to do but wait; and there is nothing so wearying or so wearing as simply waiting. On March twenty-eighth, however, my suspense was at an end; the court of appeals handed down decisions in Howard's case and in mine, reversing the judgments of the lower courts in both, and deciding that both of us had received illegal and unfair trials. The court had divided along political lines in my case. The four Republican judges concurred in the majority opinion in favor of a reversal, while the Democratic judges voted to sustain the lower court, and handed down a strong dissenting opinion, in which they took the position that I was guilty of the crime charged against me and that my substantial rights had not been violated. The dissenting opinion, stripped of legal verbiage, said that whatever errors the lower court had made in the trial of my case, they were not of serious moment, as I was a guilty criminal and had received no more than my

just deserts. This decision was a severe blow to me. If members of the highest court of the state should put themselves on record as believing in my guilt, what could be expected of the average Democratic layman, who might, in the future, be called upon to pass upon the merits of my case, in the capacity of a juror? I do not state it as a fact, but I am told by lawyers of unquestionable ability that mine is the first felony case in the history of the state of Kentucky where any appellate judge, handing down a dissenting opinion, ever took the position that the appellant (defendant) was guilty of the crime charged against him, and that his punishment was deserved. While it is true that members of the appellate court often differ upon propositions of law, in felony as in civil cases, yet rarely, if ever, do they throw the weight of their personal influence, as well as the influence of their official position against a fellow creature, struggling for his life.

Colonel W. C. P. Breckinridge said of it editorially, in the *Morning Herald*: "We regret the argument made by Judge White to establish the guilt of Caleb Powers. The argument made by him, and concurred in by the other judges, is capable of being construed to be prepared for the purpose of justifying another jury in finding him guilty, and is meant to give the weight of the official and personal character of these gentlemen to the prosecution. Under the act known as the Hardin Law, which was an ill-advised law and has been the cause of much bad law in the decisions of the court of appeals, these judges have felt that they had the right to pass upon the *facts* as well as upon the law and to decide whether errors made by the court below were prejudicial to the substantial rights

of the defendant. They have construed this phrase 'prejudicial to the rights of the defendant' to mean, that if, in the judgment of the court of appeals, the defendant ought to have been convicted and was convicted, no error was prejudicial. Of course, many people will agree with the conclusion reached by Mr. Justice White that the errors committed by the circuit judge were not prejudicial to the substantial rights of Mr. Powers, for two reasons: First, because one class of those who agree with him believes that Mr. Powers is guilty, and ought to be punished; second, the other class is certain that the jury would have convicted Mr. Powers, no matter what testimony was admitted or rejected, or what instructions the court gave or refused; and that the conclusion would have been precisely the same, if the ruling of the judge had been free from error. But this is not the law. This is not what the statute was framed to accomplish, and this opinion of these gentlemen can have no other effect than to be used to justify the officers of the lower court in the partizan selection of a jury, and to justify the jury in finding Mr. Powers guilty, even if illegal testimony be introduced and illegal instructions be given.

"We confess to a keen disappointment that the reversal in the Powers case did not receive the assent of the Democratic judges. Our conception of the errors in that case was so strong that it did not occur to us as possible that the reversal did not receive the assent of some of the Democratic members of the court. The errors committed by the trial judge in admission of the testimony seemed to us so glaring, so numerous, so shocking, that we have never been able to believe that

a judge of the court of appeals would sustain these rulings. We thought it possible this might have been done a year ago under the excitement which has seemed to possess and control the court of appeals, as fully as it did the most conscienceless members of the Legislature. The instructions given by the circuit judge were substantially peremptory instructions to find for the Commonwealth; in form it left the question of Mr. Powers' guilt to the jury, but in substance took that question away from the jury and substantially ordered the jury to find him guilty of the murder of Mr. Goebel, if he was in any way involved in bringing the mountaineers to Frankfort. These instructions will be condemned by every lawyer who has any conception of criminal law anywhere in the world outside of Kentucky, and if any judge of the court of appeals has put himself on record as approving these instructions, he will never recover from its effect, and it will remain a blemish upon his judicial reputation for both learning and fairness as long as the opinion remains a part of the judicial records of the state."

After studying carefully the opinion in my case, as published in the *Evening Post*, I gave out an interview to a reporter for that paper, in which I said: "It is not the duty of the Republican party or those who vote with it, to run down the assassin of Senator Goebel. That duty devolves upon the prosecution in these cases; but the prosecution has not done this, and in all probability never will. This being true, the Republican party will have to do it or suffer for it."

I wished to impress upon the Republican party and my friends through the state, that the surest road to relief for me was for them to assist in trying to ex-

pose the murderer of Mr. Goebel. It was not to the interest of the Democrats to do this, but very important that the Republicans should.

The fact that the prosecution was forced to try some of its own witnesses for perjury did not deter it, however, from pursuing its "hang and damn" policy, or from trying other men for alleged complicity in the murder of Mr. Goebel. Captain Garnett D. Ripley, indicted at the January term (1901) of the Franklin circuit court, and charged with being an accessory before the fact to the murder of Mr. Goebel, was the next on the list. It was said at the time of Ripley's arrest that he knew some very damaging facts against Governor Taylor. It seemed to be the intention of the prosecution to make a witness of Captain Ripley and to give him his liberty in exchange for whatever he might offer. He had been thrown into intimate relationship with Taylor, and was consequently in a position to know a great many damaging things against Taylor, the prosecution argued, especially when his own liberty depended upon this knowledge.

But Ripley did not turn out to be a Golden, a Noakes or a Culton. He told me with his own lips that he was offered immunity for testimony, but that he promptly refused. Ripley was not for sale. The prosecution, consequently, was forced either to try him or give him bail, as it had given Davis, Combs and Whittaker.

Nearly a year had elapsed since the Goebel murder before Captain Ripley was indicted, and more than a year before he was arrested. The prosecution could not very well afford to confess that it did not know, after a year's investigation, who among all those ar-

rested was guilty of the Goebel murder. From the necessities of the case, Captain Ripley had to be tried. The trial began in April, and at its conclusion the jury brought in a verdict of "not guilty."

There were few developments in the weeks that passed until, on September ninth, 1901, when Judge Cantrill delivered his famous charge to the Franklin grand jury. Cantrill was at that time in the campaign for United States senator. He was badly defeated finally, although it was said in his favor that he had rendered the Democratic party much service in his judicial capacity. After the grand jury had been impaneled, Judge Cantrill, in his own peculiar vein, proceeded with his instructions which are given herewith, in part, as repeated in the daily press.

After alluding to the assassination of President McKinley, he said: "It has not been two years since this grand old Commonwealth was shaken from center to circumference by a similar tragedy. On Capitol Square, one of the leading citizens of your state was shot down in a similar manner. It is deplorable and humiliating to have to admit that there are certain elements in Kentucky, that, if they did not openly approve the act, were willing to excuse it. The pulpit, as a rule, sent up no supplications to the Throne of Grace that the life of William Goebel should be spared to their Commonwealth. If there were any expressions or indications as to the feeling of the pulpit at that particular time, I know nothing of them; and if there were any prayers to the Throne of Grace, they were secret prayers that the life of that brave citizen should not be spared, but that the party, which was making the contest against him for office, should be

his successor. I know whereof I speak. You know the character and conduct of the pulpit in your community at that time, and I am advised, and I know, that throughout all the length and breadth of the state of Kentucky, there was no condemnation of anarchy nor was there any denunciation of the assassination. I do not want, nor do I intend, so far as I am concerned, that the people of this Commonwealth shall forget the great crime and outrage which was perpetrated within its borders." Referring to the attitude of a certain part of the press, he said: "I do not hesitate one moment to denounce it as the conduct of a lot of treacherous, cowardly, libelous curs, that no community ought to tolerate."

It was in such terms that this wonderful judge continued his most wonderful charge. Comment upon it is unnecessary. I merely wish to add that the judge who delivered this remarkable statement was the one before whom my first trial had already been held, and before whom my second was soon to take place.

CHAPTER XXXIV

AGAIN BEFORE JUDGE CANTRILL

Governor Durbin declines to honor requisitions for Taylor and Finley — My second trial a repetition of the first — Judge Cantrill refuses to vacate the bench — Twelve partizan Goebel Democrats act as jurymen — Am again convicted, and sentenced for life

As my case was to be called for trial on October eighth, 1901, it was necessary for the prosecution to revive the partizan passions of the past. Cantrill's inflammatory charge to the grand jury had in a measure spent its force. Requisition papers therefore were again issued for Taylor and Finley, and this time were refused by Governor Winfield T. Durbin, who had succeeded Governor Mount as chief executive of the state of Indiana.

As soon as I arrived at Georgetown for my second trial, Cantrill again showed the cloven hoof by having an order served on the jailer forbidding him to allow "either women or preachers to see me."

My case was called for trial on Tuesday, October eighth, 1901; and my counsel promptly filed a vigorous affidavit, attempting to remove Judge Cantrill from the bench. The affidavit stated in substance that Judge Cantrill was an ardent Democrat, while the defendant was a strong Republican; that the judge was a warm personal friend of the deceased, William

Goebel ; that he (Cantrill) was then a candidate for the United States senatorship and had not only shown strong political feeling against the men accused of the murder of Senator Goebel, but was then attempting to enhance his candidacy for the office he sought by his persecution of the men accused of the Goebel murder ; that the case made out against me during my first trial and the conviction therein was largely brought about by the illegal and unjust rulings of Judge Cantrill. The affidavit stated further that the judgment in my case had been reversed by the appellate court, and the order of conviction set aside, because Cantrill's rulings were found to be illegal, unfair, and prejudicial to my substantial rights ; that Judge Cantrill in his recent charge to the Franklin County grand jury, took advantage of the opportunity and made a stump speech of abuse in the guise of a charge to the grand jury, in which he bitterly attacked all those accused of the murder of Senator Goebel ; that the recent order of the judge commanding the jailer of Scott County not to " permit any preachers and women " to visit me was a palpable exhibition of his enmity toward me.

The affidavit also stated that about fifty-five per cent. of the voters of Scott County were Democrats, and about forty-five per cent. Republicans ; and, that of the latter not more than twenty per cent. were negroes ; that Henry Youtsey, one of the accused, was given a solidly Democratic jury when he was tried and convicted ; that the same was true of James Howard, another accused, and that I had been given a solidly Democratic jury on my first trial.

Judge Cantrill promptly overruled the affidavit, said he proposed to try the case, and the selection of the

jury was begun. The same tactics were resorted to by the prosecution as had been used in the selection of all the juries in the trials of the Goebel suspects—the sheriff failing and refusing to summon practically any Republicans or Independent Democrats. To begin with, the jury-wheel had been packed with the names of Goebel partizans by three partizan Goebel Democrats, appointed by Judge Cantrill, and one of whom, B. S. Calvert, had served on my first jury. Out of the two hundred names drawn from the jury-wheel, five only were Republicans; these were excused by the court and the Commonwealth from jury service.

Not enough of the two hundred venire-men, directed to be summoned, of whom one hundred and twenty-five were actually summoned,—three of them Republicans,—qualified to make up the jury, and the sheriff and his deputies were directed to go to the adjoining county of Bourbon on a summoning tour. They were escorted on this mission by three Democratic office-holders of the county of Bourbon, who knew the political affiliations of every family in the county. The Scott County officers, piloted by their escorts, passed by the homes of Republicans and Independent Democrats. Goebel Democrats were even selected and summoned from the very midst of groups of Republicans and Independent Democrats. Among one hundred and sixty-eight venire-men summoned from Bourbon County there were only three Republicans.

The result was that when the jury was finally made up, it was composed of twelve partizan Goebel Democrats. The trial then proceeded. While the witnesses and the evidence were in many respects about the same as upon my first trial, the prosecution had suffered



Judge James E. Cantrill

Judge Joseph E. Robbins
Judge "Dan" Moore

THE JUDGES DURING MY TRIALS



the loss of "strolling barber" Weaver, perjured Finley Anderson and lying Bob Noakes, while the defense introduced a number of new and important witnesses.

At the close of the testimony in the case the opinion prevailed that the defense had the advantage. Even the *Courier-Journal* admitted that I made a good witness for myself, saying: "He kept his balance and made replies that were sharp cuts at the Commonwealth, and arguments within themselves." While the defense made out a stronger case than at the former trial, it labored, nevertheless, with almost insurmountable difficulties. My filing an affidavit for the removal of Cantrill had so nettled him that he was even more tyrannical than during the first trial. He was not on speaking terms with some of my lawyers and throughout the court procedure showed plainly how bitter was his hatred for them. He frequently contradicted them in regard to what had occurred during the progress of the trial, fined them upon the slightest provocation, and issued capiascs forthwith. At the conclusion of the arguments in the case, the jury returned its verdict, and again sentenced me to life imprisonment.

My attorneys filed their motion for a new trial and Judge Cantrill promptly overruled it. Then, turning to me, he said: "Caleb Powers, stand up. Have you any reasons to give why sentence should not be pronounced upon you?"

I replied: "I have reasons, sir; but they will avail me nothing in this court."

The court then said: "I now sentence you to confinement for the remainder of your natural life, at hard labor, in the state penitentiary at Frankfort."

The judgment was then suspended pending an ap-

peal, and my counsel was given until the first day of the February term of court to prepare the bill of exceptions.

Sentencing me to life imprisonment did not quite satisfy Cantrill's animosity, for, turning to the clerk, he commanded that official to enter an order transferring me to the Franklin County jail. He then said to the sheriff: "Remove the prisoner." I was heavily handcuffed and then marched through the streets of Georgetown, guarded by eight deputy sheriffs, three in front, three behind, and one on each side of me. Two of the jurymen boarded the same train and seated themselves just in front of me. On reaching their station, one of them, T. E. Gayle, arose from his seat, and I heard him say to his companion: "I intend shaking hands with that young man before I leave the train." He advanced toward me, grasped my hand warmly, and said: "Good-by, my friend. May God bless you and protect you."

"May He not forget you," I replied, "for there is no doubt you need His mercy more than I do." And so we parted.

That night he slept under the roof of his home, surrounded, perhaps, by wife and loved ones, while I lay behind the bars of a bastille, fettered and branded as a felon.

CHAPTER XXXV

YOUTSEY AND THE PROSECUTION

J. B. Howard's second trial results in change of sentence to life imprisonment — Berry Howard's acquittal — Attempts to induce Youtsey to make a "new" confession — Torture at last produces a statement that is satisfactory to the prosecution — My own position becomes more grave

The second trial of James B. Howard began January seventh, 1902. The work of impaneling the jury was immediately begun and, when completed, the jury was composed of the inevitable twelve Goebel Democrats. When the prosecution closed its case, Howard had not been connected by any testimony with either the alleged principals in the murder of Goebel or the alleged accessories. In the end, however, the jury returned a verdict of guilty, sentencing the prisoner to imprisonment for life. Howard's attorneys appealed the case.

Then followed the trial of Berry Howard. He had been a "fugitive from justice," as the prosecution expressed it, for nearly two years, and during this time there had been standing a reward for his capture and his conviction. He had, however, been finally arrested and had no sooner been lodged in jail than the prosecution sought to make a star-witness of him, as it had of others. Youtsey's statement to Arthur Goebel, that Howard was one of the principals, established the

ground on which the prisoner was approached. But Howard unhesitatingly and positively declined to act as a witness for the prosecution. His arrest had not been any "fake," as alleged by some. He did not pose — heroic people never do.

Defeated in their purpose, the attorneys for the Commonwealth, led by the redoubtable Campbell, now sought to make good the charge against Howard. It would never do, they well knew, to give him his freedom without a trial. Nevertheless, evidence to convict him was not at hand, and, in this particular case, could not be procured.

During my first trial, it was established by the testimony of Doctor G. W. Prewitt and John Perkins that Dick Combs was not in the private office of the secretary of state at the time the fatal shot was fired. Combs, accordingly, had been released on bond. Youtsey had further asserted that not only was Combs in my office at the time, but that Berry Howard was present also. At the time Combs was admitted to bail, the Goebel press made much of the fact, but it neglected to give any prominence to the fact that Howard, the "fugitive from justice," was exonerated of all connection with the crime by establishing an alibi with similarly strong evidence. Instead, for two years, he had been referred to as fleeing from arrest, an outlaw, afraid to face the charge against him. The prosecution realized that a blunder had been made, but that, after the months that had elapsed and the statements that had been made, there remained nothing to do but induce Howard to turn state's evidence, or bring him to trial. He put an end to negotiations to accomplish the former himself, and the prosecution, therefore,

hastened his hearing. He was acquitted, the prosecution informing the public through the medium of its faithful press that whenever a man suspected of the murder of Goebel was innocent, he was acquitted, but when guilty, he was convicted.

After my case had been finally submitted and prior to the November election, 1902, at which four Democratic judges of the court of appeals had been elected, a full bench had scarcely ever been present in Frankfort, so my case had not been considered. During the interval, or at least, before my case was passed upon, Henry Youtsey, who was in the state penitentiary, made two other "confessions." In the third confession, Youtsey accused James Howard of shooting Mr. Goebel from my office, at the instance of Governor Taylor, myself, and others. It was further intimated that he implicated many other persons, some of them men of prominence, whose names had not heretofore been brought into the case. While the public generally looked upon Youtsey's revised "confession" with much suspicion, still it had to be reckoned with. My friends were alarmed; my enemies delighted.

"Ere the snow flies before advancing spring, there will be a rattling of dry bones that will shake the Commonwealth from one end to the other," said one paper.

"The evidence now in the possession of the Commonwealth will be absolutely damning against Howard and Powers," said another; while another said: "They will not live till flowers bloom again."

Many of my friends urged me to dismiss my appeal, go to the penitentiary, save my life, and await my vindication, which must come some day. They insisted

that, however innocent I might be, I was liable to lose my life in the whirlpool of corruption, political necessity and revenge, before the frenzy of the times subsided. They urged that the Democrats would have a majority on the appellate bench after the first of January, 1903, and that, in all probability, its Democratic members would affirm any sentence that might be returned against me in the future; and that the Democratic governor was already pledged to its execution, whatever it might be.

It was evident that Youtsey had gone over to the prosecution, body and soul, and would, in the hope of gaining his freedom, or relieving the horrors of his situation, rehearse on the witness-stand any part in the drama which might be prepared for him. It was known to his friends that he had been made to suffer the tortures of the damned while in the penitentiary, and before he had "confessed." He had shoveled coal into the "fiery" furnace by the side of two negro companions during the sweltering days of July and August, 1901, when the thermometer was ranging from ninety-five to one hundred and ten degrees; he had, for eight consecutive Sundays, according to the statement of his faithful wife, been locked up in a dark cell and fed on bread and water, while other prisoners enjoyed the freedom of the grounds and their Sunday dinner; at other times, he was forced to wear the ball and chain and was subjected to even greater torture and humiliation. He was carried from the life-killing boiler-room to a dangerous machine shop, where he became entangled in the machinery, losing part of one hand and almost his life. He began to die; he told the warden that he could not live without better treatment and bet-

ter food. The warden urged him to "confess;" increased his labors and hardships, and told Mrs. Youtsey that her husband knew how his burdens could be lightened. Youtsey told her he could not live. She implored him to act honorably, and tell the truth fearlessly upon all occasions and under all circumstances. She had visited him frequently after his incarceration, until the winter and spring of 1902, when her visits were curtailed by the penitentiary authorities; and soon she was refused the privilege of seeing her husband at all. Even the *Cincinnati Enquirer*, November fifteenth, said, in speaking of Mrs. Youtsey after she had paid a visit to the penitentiary: "She suffered a severe nervous and hysterical attack, the attention of physicians being necessary. It is said that this was caused by learning that her husband had been flogged." The cruelties and tortures to which Youtsey was being subjected were generally known; and it was freely said that he had agreed to swear to anything in the hope of alleviating the misery of his condition, and possibly, in time, gaining his freedom. As a matter of fact from the very moment of Youtsey's arrest, the public looked upon him with suspicion. As one wayward step destroys a character which has been "as chaste as ice, as pure as snow," so the alleged confession of Youtsey to Arthur Goebel and Tom Campbell, on the night of his arrest, took from him whatever respect he had gained for himself through life. According to his alleged confession, which, at that time, was not fully credited, he was either both a murderer and a traitor, or was telling a falsehood upon innocent men to save himself from punishment. It turned out that he had made false statements then, and implicated a number

of innocent men, trying to shield himself. He did not gain much in public opinion in the months which followed his arrest, and to hold him as much as possible above reproach, his close friends bitterly denied that he had made a confession or knew anything to confess. When my first trial came up, July, 1900 — and conference after conference was held between Youtsey's friends and the lawyers for the prosecution for the purpose of agreeing upon terms to gain immunity in exchange for Youtsey's testimony, the faith of those who had believed in his integrity received another blow, although these conferences and their purpose were kept, to a great extent, *sub rosa*. When, on a plea of illness, Youtsey had succeeded in evading trial till October, 1900, and then, in the midst of the testimony for the prosecution, had a "connip-tion" fit, and, during the remainder of his trial, lay on a couch in an apparently comatose condition, many lost confidence in his innocence, though others believed that his pretended fit was genuine. When, however, after conviction, he refused to prosecute his appeal, and accepted imprisonment for life without protest, the consensus of opinion, even among Republicans, was that he was guilty. After his incarceration, it was persistently rumored that he was to become a witness in the Goebel cases, and, as he had never testified in his own or any of the other cases, he was in a position to tell a fresh story woven by the inimitable Tom Campbell to fit the matured theory of the Commonwealth. As the private secretary of Auditor Sweeney, he had, necessarily, since the contest began, come in contact in a social or business capacity, with many men, and possibly, some prominent in the councils of

the party. At such times and places as he chanced to see them, he could easily put in the mouth of any one of them any statement regarding the assassination of Senator Goebel that was desired by the prosecution. This might be done regarding any man who stood high in the Republican party, even men who had never been indicted. If men who had never been formally charged with Mr. Goebel's murder, stood in danger, what shall be said of those who had been tried and twice convicted for alleged complicity and who must be kept convicted in order to substantiate the claim of a Republican conspiracy? Three men must be implicated by Youtsey — James Howard, and I, who had been twice convicted, and Taylor who was a "fugitive from justice." The prosecution and the Democratic party could not afford to admit by Youtsey's failure to implicate us that we were not guilty of complicity in Goebel's murder; that Republican governors of Indiana (Mount and Durbin) had done right in refusing to honor requisitions issued by the Democratic governor of Kentucky; that James Howard had been sentenced to be hanged and I had been sentenced to life imprisonment, when, in reality, we were innocent of the charge brought against us. Such an admission would shake the faith of the country in the Goebel jury trials, and brand the courts as engines of oppression. I knew that the prosecution was compelled, through Youtsey, to make good its charge of a conspiracy, or confess to the public that it had committed a series of monstrous, unspeakable wrongs. This it would never do. Never would it permit Youtsey to say that he had killed Goebel on his own volition, and that no Republican official was responsible for the murder. With its reputation

(?) at stake, and the saving of it dependent on the action of a weak, villainous convict, who was completely in its power, and at the same time chafing at prison-life, dying from its effects, and longing for freedom, it was easy to determine what would be its course. Youtsey, as has been said, confessed. His second confession did not meet the approval of the prosecution. It was sent back to him; he burned it, and also his short-hand notes of it. It is said that this confession, like his first, did not implicate me in the remotest way. Youtsey's torture was increased, and it was not until he had made his third and satisfactory "confession," to which reference has been made, that his hardships were mitigated. Then he was not only relieved from labor, excused from work, put in the hospital, fed on the best the prison afforded, but was relieved of his stripes, and practically made free of the prison. I felt sure that if I went to the penitentiary, I would eventually be given my liberty, for I knew then, as I know now, that the mystery surrounding Mr. Goebel's murder must some day be cleared away, and the innocent relieved of suspicion. I was not unmindful then, or am I now, of the danger to which I exposed my life by refusing to dismiss my appeal and go to the penitentiary; but I resolved, whatever fate befell me, to stand firm and unfaltering and to contend for my rights and my liberty, my integrity and my honor, if it cost me my life. I was, and am yet, determined never to appear guilty by failure to fight my case or in any other way. I will never bring shame and disgrace upon the state and a dead father's name by a weak acquiescence in a dastardly charge of which I am innocent. I resolved that if the state officials resorted to murder, the blood

and shame should be upon their hands, not mine. I was satisfied both before and after Youtsey made his third confession, that I would be tried again, because I felt sure that the court of appeals would grant me a new trial, which it did on December third, 1902; but the Democratic judges again handed down a strong dissenting opinion, in which they said: "He is positively connected with the conspiracy by two confessed participants in it."

CHAPTER XXXVI

HOWARD'S THIRD TRIAL

Cecil's remarkable testimony — Youtsey tells a long story, but fails to connect me with the so-called conspiracy to kill Senator Goebel — Admits having perjured himself, when confronted with affidavits — Is again convicted and sentenced

Howard's case was called for the third time on the seventh of April, 1903. After some delays, the trial began and Howard was provided with a solid Goebelite jury to try him for his life. The Commonwealth, it is needless to say, had resorted to its usual tactics in summoning and selecting the jury.

The testimony of Cecil and Youtsey afforded the sensation of the trial. When Cecil took the stand, the spectators in the court-room made every effort to catch a glimpse of the man who had been heralded as one of the state's new star-witnesses. Over two years had passed since he had been indicted for complicity in the Goebel murder; for over two years he had been a fugitive — I can not say from justice. At last he was on the witness-stand at the instance of the prosecution; swearing to anything to secure immunity for himself. His intelligence is far above the average, and, judging from his general demeanor, one would never suspect that his life had been that of a desperado and criminal.

Cecil told his story of a proposed butchery of the

Democrats at Frankfort, January, 1900, and of his willingness to see Senator Goebel assassinated, with the nonchalance of one to whom murder plots were no more than plans for picnic parties. He asserted calmly that he had not wanted to get into the murder himself, but that he had not been "particular how it [the contest] was settled, so it was settled. I wanted to see Taylor seated," he said. He testified, however, that he was not a party to the killing of Senator Goebel; that he had never entered into a conspiracy with anybody to bring about that result, and knew nothing of any plan or arrangement on the part of anybody to have Goebel killed. Nevertheless, he swore that he was in my private office in Frankfort on the twenty-ninth of January, and that I told him there that I was looking for a man to come to Frankfort the next morning to kill Goebel, but that he was so little concerned about it himself that he did not ask me the name of the man.

Although the testimony of Cecil, as well as that of some other witnesses in other trials, was sensational and would indicate, if true, that I indorsed murder, still no witness had ever been introduced in any of these trials, either by the prosecution or the defense, *who professed to know anything about any murderous plot, if such there was, which resulted in the death of Senator Goebel.* Other witnesses had testified to this circumstance, this one here and that one there; others had told of hearing incendiary speeches, and of the laying of murderous plans on the part of divers individuals, *but no witness had ever professed to know anything about a plot that actually resulted in the death of Senator Goebel, if any such plot had been formed. The*

alleged conspirators and murderers, who were accused of planning and plotting to that end, had never been placed together by any witness. The place where the conspiracy to murder Senator Goebel had its inception, or the persons present and participating at its inception, had never been revealed by any witness. Who had fired the fatal shot, nobody knew; whether anybody had procured some one to fire it, was equally unknown. What the assassin received for his service was likewise speculation. Who, if anybody, was present aiding and abetting the assassin, was as much unknown as were the real conspirators. In fact, the Goebel murder was a mystery.

It was expected by those who had not studied the real purpose of the prosecution, that Youtsey would unfold the "hideous details of the darkest crime in Kentucky's history," while others felt that he would tell any story that would assist in procuring his freedom, or in alleviating the horrors of his prison life. Whether Youtsey would tell of his own connection with the murder of Mr. Goebel, and drag into it the names of innocent men, at the same time, weaving a story, or rehearsing one woven for him, so as to make it stand as a complete and convincing whole, was what most concerned the wrongfully accused. No one knows better the force of stories, composed of half-truths and half-falsehoods, than those who have been the victims of them. I have already pointed out that Youtsey's situation in life, his relation to the Taylor administration, his whereabouts immediately following the firing of the fatal shot, his conduct before it, his conduct after it, added to the fact that he had never testified and was free to state anything that might fit the theory

and further the purposes of the prosecution, made him a most dangerous witness, and his evidence a probable menace to the lives of many innocent persons. It is not, therefore, to be wondered at that the court-room was packed to suffocation when Youtsey, the long-desired and much-heralded witness, took the witness-stand for the prosecution.

He did not wear prison stripes as had been expected, but appeared in a somber gray suit which fitted him like feathers on a wild duck. He is a decided brunette, with small, weasel-like eyes. A ghastly paleness, always so terrible in a swarthy face, overspread his features as he took the witness-stand. He looked more like a dead man than a living one. This death-like appearance continued all through the first day of his examination, and during the whole of the time he was on the witness-stand he had a maniacal expression.

Youtsey is the only witness ever introduced by the prosecution in any of the Goebel trials, who professed to know anything about a plot to kill Senator Goebel or to be able to give any of its details. He told at length of his various efforts to kill Senator Goebel, of his trying to secure the service of one Doctor W. R. Johnson, and their efforts to commit the dastardly deed. He also told of ordering smokeless powder cartridges and steel bullets for the purpose, and of the departure of Johnson without committing the crime. He related in detail two efforts to secure the services of a negro by the name of Hockersmith and of the collapse of that scheme. He said that he had but one talk with me concerning the killing of Senator Goebel, but in that one conversation I agreed to leave my private office open for the purpose of

affording a negro an ambush, wherefrom he might kill Goebel. He said that, after the negro scheme had failed, because he could not get into my private office, he wrote a letter at Taylor's instance to James B. Howard, of Clay County, to come and kill Mr. Goebel. Neither Taylor nor Youtsey nor I knew Howard. He said that Howard came on the morning of the thirtieth of January, a few moments before Goebel was killed, and that after introducing themselves to each other, he went into my private office through the open door leading from the reception-room, admitting Howard through the private hallway door, and that in a few moments thereafter Howard fired the fatal shot.

Youtsey did not connect me even remotely with the alleged Taylor-Howard-Youtsey conspiracy to kill Mr. Goebel. On cross-examination he said that he did not testify in his own case, but had had, during its progress, a pretended fit, because he believed it "the best thing to do under the circumstances." He said that after his incarceration in the penitentiary he began to talk to those in authority to find out the next thing to do. He talked to Mr. Lillard, the warden, to Robert B. Franklin, the Commonwealth's attorney, to Judge James E. Cantrill, before whom he was tried, to Mr. Thomas C. Campbell, and even sent for and had a talk with Governor Beckham, as a "feeler." He said that he told Governor Beckham he wanted to make a "full confession." He said the governor advised him to tell all he knew, but did not promise him a pardon, *saying that he could not compromise his office by making a promise, but did not say he would not grant him a pardon.*

Youtsey went on to say that when he was arrested

and thrown into jail, he sent for Mr. Campbell and Mr. Goebel and made a statement to them regarding the assassination of Senator Goebel, *and that he told them then how he admitted James Howard, Berry Howard, Dick Combs and Frank Cecil* into my private office a few moments before the fatal shot was fired. Youtsey admitted that he had lied to Mr. Goebel and Mr. Campbell upon that occasion, that he had allowed Dick Combs and Berry Howard to be indicted as principals in the Goebel murder, upon his false statement, and that he had been confined in jail with Dick Combs many months, knowing that he was an innocent man, yet had made no effort to have him discharged from wrongful imprisonment. He admitted further that he was in the state prison when Berry Howard was put upon trial for his life, but never revealed to any member of the prosecution the fact that Berry Howard was innocent of that with which he had charged him.

Youtsey testified that in his first interview with Mr. Campbell and Arthur Goebel, he told them he never discussed with me the killing of Senator Goebel from my office. He said: "*I had selected the secretary of state's office as the place from which the shot could be most safely fired. This was agreed upon. I did not talk to Caleb Powers about this.*" It will be seen that in the first statement he ever made concerning the murder of Senator Goebel, he positively says he never talked to me concerning it. He said the door leading into the reception-room from my private office was *open* on the morning of the tragedy, but he did not state that I had agreed to leave that door open on that morning for the purpose of having Senator Goebel killed from that office, or for any other purpose. And

the defense in my third trial proved by seven witnesses — one of whom was a leading star for the prosecution — that the door to my private office was locked, which Youtsey said was open, and through which he said he entered for the purpose of admitting Howard to do the murder. Youtsey admitted that, a few days before the killing of Goebel, he tried to get from Walter R. Day, treasurer of state, three hundred dollars to settle the contest. He admitted that he had a talk with Culton after the tragedy, and had asked Culton if he (Culton) could place him (Youtsey) as being in the lobby of the Legislature at the time of the firing of the fatal shot.

Then Youtsey was confronted with the signed statement he made for Mr. Kinkead before he was arrested, in which he said that he knew nothing incriminating against any one accused of the Goebel murder and with the affidavits he had made exonerating Howard and myself. He was forced then to confess that he had not only told falsehoods, but had sworn to them before he became a witness. Howard, when placed upon the witness-stand, denied under oath Youtsey's statements. I did the same. Taylor under oath by deposition did the same. When the testimony in the Howard case was in and the arguments completed, the jury returned a verdict sentencing Howard to life imprisonment. No sooner had the verdict in Howard's case been rendered than his counsel filed a motion for a new trial, which Judge Cantrill overruled.

CHAPTER XXXVII

MY THIRD TRIAL

Death of my father — I am not permitted to attend his funeral
— Judge Robbins supplants Judge Cantrill — Another
packed jury — Youtsey and Cecil testify against me

While Howard's third trial was just over, mine was rapidly approaching. Howard's case was carried to the court of appeals, and after it was affirmed there, was carried to the supreme court of the United States, and has not yet been passed upon by that tribunal. On the first day of the May term of the Scott circuit court, my attorney again moved that Judge Cantrill vacate the bench and order the clerk to certify to the governor that a vacancy existed. The Court refused to vacate the bench, although the court of appeals had decided that he must vacate it. A writ of prohibition was applied for and the court of appeals again decided that Cantrill should vacate the bench, which he did. But it was August before my trial took place. In the meantime, Governor Beckham appointed Judge Joseph E. Robbins, of Mayfield, to act as special judge in my case. Sometime previous to this, a Democratic Legislature, at the instance of the prosecution, had passed a law, giving the governor the power to appoint a special judge, when for any reason the regular judge could not preside, provided the attorneys in any case failed to agree upon one. The majority of the attor-

neys at the Georgetown bar is Democratic, but is just and impartial, and I am sure that the members of the bar there would have elected an impartial judge to try me had not the old law been changed. This new law was enacted for the purpose of closing against me every possible avenue to a fair and impartial judge — a just and honest trial. It was meant to close the door of hope in my face. The lawyers for the prosecution were not willing to leave the selection of a special judge to chance. The power to appoint was given to one, of all other men, most interested in fastening the stigma of the Goebel murder upon leading Republicans — the last man who could be expected to get away from his bias, personal interest and partizanship and do right. The death of Mr. Goebel made Governor Beckham the foremost Democrat of the state — made him governor. Judge Robbins had presided over the Democratic convention at which Beckham was nominated to succeed himself as governor. This was the same Judge Robbins whom Governor Beckham had appointed as a special judge to preside at my trial.

And while preparations were being made for it, a telegram reached me at the Georgetown jail, announcing the death of my father. He had been in poor health for ten years, had visited me but once since my incarceration, and had never been physically able to attend my trials. Nevertheless, his death was sudden. I immediately telegraphed Judge Robbins, the special judge in my case, and had my attorneys telephone and telegraph him, offering to file a bond of fifty thousand dollars if he would permit me to go to my mother in her grief and attend my father's funeral. Judge Robbins refused to grant my request.

It is best to draw the veil of silence over the sad hours that followed. Those that have lost a loving and watchful father can realize my feelings. He was sixty-seven years old at the time of his death. The shock of my arrest and the grief caused by my two convictions for an atrocious crime, of which I am innocent, "shattered his nerves and fastened upon his stooping form a load of grief, which was never lifted until his trembling, weakening years let it fall at the tomb."

On his way to Georgetown, to preside at my third trial, which had been set for August third, Judge Robbins came by the city of Frankfort, and, after a long conference with Governor Beckham, decided to resign his position as a member of the Democratic campaign committee for the approaching election. On reaching Georgetown, he stopped at the Wellington Hotel, the rendezvous of the lawyers and partizans of the prosecution. He was soon imbued with and partook of the spirit of the Goebelite partizans and lawyers for the prosecution. He had held several offices at the hands of the Democrats of his district. He had indorsed the Music Hall convention; voted for Goebel; approved the contests; and denounced the Republicans as murderers and assassins.

When my case was called for trial he made an order directing the sheriff to summon two hundred men from Bourbon County for the purpose of doing jury-service in my case. My attorneys asked him to admonish the sheriff to summon an equal number of each political party. This request was refused. My counsel then asked him that the sheriff be instructed to summon the talesmen as he came to them,

regardless of political affiliation. This he also refused. The sheriff and his deputies, accompanied by Democratic officers of Bourbon County, then proceeded to summon for jury service in my case one hundred and seventy-six men from the county of Bourbon, which in 1896 gave McKinley a majority of four hundred votes over Bryan, and Taylor a comfortable majority over Goebel, in 1899. Out of the one hundred and seventy-six men summoned, one hundred and seventy-three were partizan Goebel Democrats! This result was secured by deliberately failing to summon the Republicans, who in many instances lived along the same roads, streets and pikes where lived their Democratic neighbors who were summoned. The defense knew from this that it would again be impossible to get a jury not embittered by prejudice and hatred.

After the jury had been finally selected, the defense entered a motion supported by affidavits, asking that the entire jury be dismissed on account of bias and hostility toward the defendant and on account of the manner in which it had been summoned and selected. The court overruled the motion, and the case went to trial. Eleven of the jurors were partizan Goebel Democrats, one, a Mr. Hanley, had once been a Republican. Out of the six hundred or more summoned for jury service in my three trials, he was the only Republican not rejected by the prosecution. And, after he had been accepted in my case, it developed that he had not voted with the Republicans since the assassination of Mr. Goebel, of whom he was a great admirer, and, at the time he was trying me for my life, had hanging on the walls of his room

a framed picture of the dead senator. No Republican ever sat on any of the other juries that have tried other men charged with the Goebel murder. There have been more than seventeen hundred men summoned for jury service in the trials of the Goebel cases. Mr. Hanley, the juror in my third trial, occupies the unique position of being the only Republican ever permitted by the prosecution to sit on any of the juries.

A number of new witnesses appeared both for the prosecution and the defense. Among them was Henry E. Youtsey and F. M. Cecil for the prosecution. To their testimony attention has already been called. My testimony was the same in substance, and along the same lines as given at my two former trials. I denied *in toto* the damaging statements attributed to me by Broughton, Cecil, and Youtsey. Some of the new witnesses for the defense were very important.

I have referred very briefly to the testimony in this and other trials, for the reason that nearly all the material testimony in the case, both upon the side of the prosecution and the defense, is referred to and quoted in my argument to the jury, which appears in full in the Appendix.

After the testimony in the case was in, and the jury had visited the scene of the tragedy and been instructed by the court, the arguments began. Judge J. R. Morton led off in a brief and forceful argument for the defense and was followed by Samuel M. Wilson, also for the defense, in one of the ablest arguments ever delivered in any of the Goebel trials. Mr. Wilson was followed by Colonel J. K. Hendrick in one of his characteristic speeches, and he, in turn, was followed by Major A. T. Wood, who made some telling points

for the defense. Mr. Campbell, for the prosecution, spoke in his usual semi-political style, closing his argument at the afternoon session of the court. On Thursday, August twenty-seventh, I had prepared to address the jury in my own behalf, and when the court convened at seven-thirty that night, it was my turn to be heard. Though I was represented by able counsel, and though it is unusual for one accused of crime to make an argument before the jury, still I felt that in consideration of the circumstances surrounding my case, I was justified in doing so. I felt that I might as well try to bombard a fog as try to win over the packed jury that was hearing my case. At the same time I had been so long branded as a mountain cut-throat and assassin, and the facts in my case had been so long suppressed and so long misunderstood, that I was determined, at last, to be heard in my own behalf, and, so far as I could, to bring the reasons of my persecution into the white light of publicity.

CHAPTER XXXVIII

CONDEMNED

My closing argument in behalf of myself — Crowds listen to my review of the case, in which I arraign the prosecution — Jury, however, finds me guilty, attaches the death penalty, and I am sentenced to be hanged — Appeal to the higher court

The fact that it was my intention to deliver an argument in my own behalf had reached the ears of the vigilant newspaper correspondents, and, consequently, was well-known to the public. The result, one writer has expressed: “Long before the convening hour, the spacious court-room was packed to suffocation with men and women representing every calling in life. The matron and maid, beauty, wealth, and poverty had congregated to witness a scene, the like of which had rarely occurred in the history of all the past.

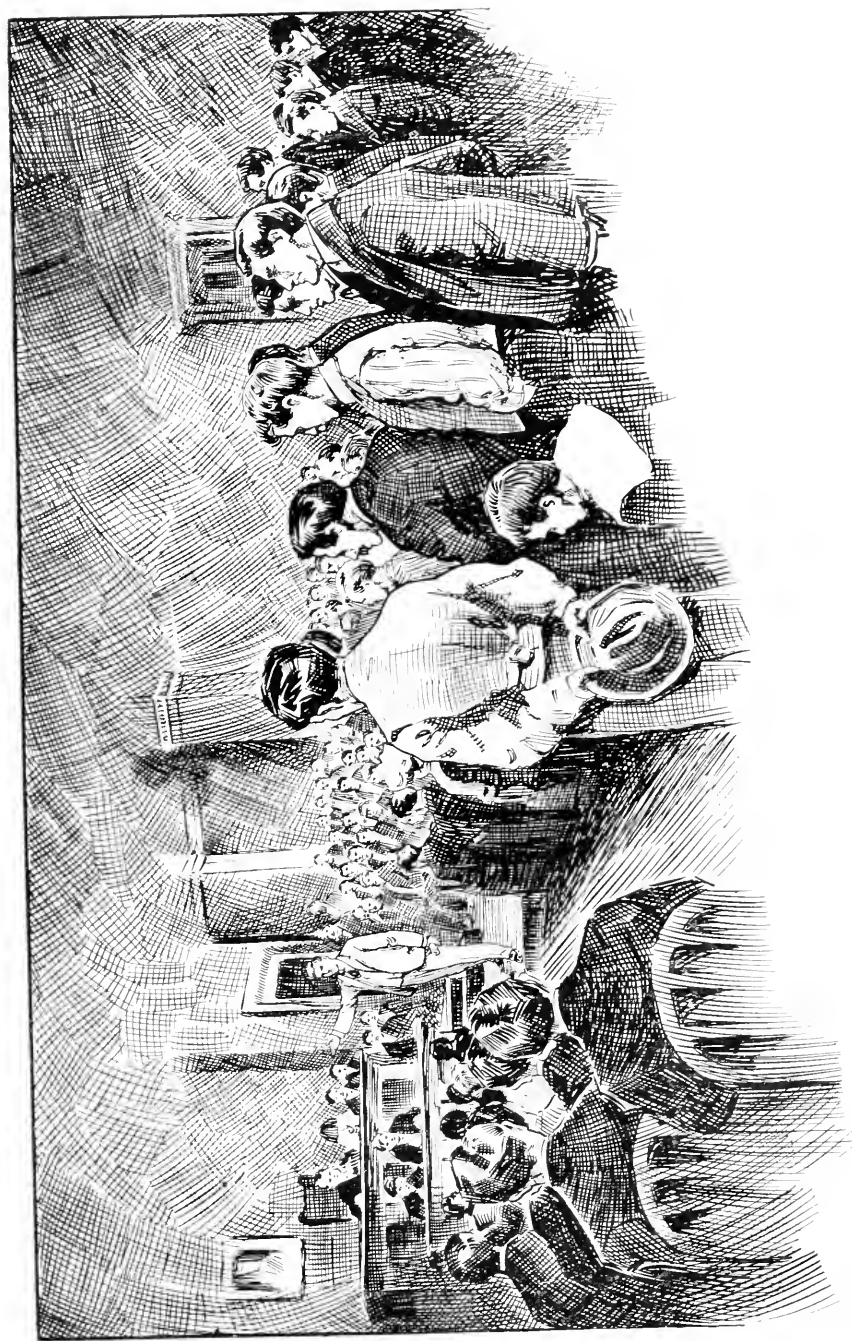
“At half-past seven o’clock in the evening, court was called to order. The judge directed that the argument proceed. Mr. Powers emerged from the jury-room, with head erect, dauntless and brave, as he pushed his way through the mighty throng and began his speech. Composed and calm, in a low tone of voice, amid the pall and silence of that vast audience that hung with bated breath upon his every word, the young prisoner and orator proceeded, apparently unconscious of the gravity of the occasion. He spoke

until nine-thirty, when court adjourned until the following day. The interest aroused by Mr. Powers' first appearance before the jury was increased between the adjournment at night and the convening of court the next morning. Long before the hour for the convening of court, the court-room was jammed with sweltering humanity — all bent upon hearing every word the defendant might say in conclusion of that splendid speech begun the previous evening. Mr. Powers resumed his argument at nine o'clock, speaking until noon. Beginning again at one-thirty, he concluded at three-thirty, having spoken nearly seven hours in all."

I began* by apologizing to the jury for taxing its patience with another argument. I called attention to the silence I had preserved despite two adverse verdicts, discussed in detail the political aspect of my prosecution. I said, in substance, that my guilt or innocence since my arrest had been made issues upon which men had sought political nomination and offices. I asserted that juries had been packed against me, and called attention to the fact that the present jury, hearing my case, was composed of eleven Democrats and one Republican.

"It has been three years since I was thrown into jail," I said, "charged with a cowardly assassination. During that time the Legislature had hung over my head a reward fund of one hundred thousand dollars to convict me. Is it any wonder that many fingers have been trying to get to that fund? Is it any wonder that so many have confessed for the sake of immunity? Is it any wonder that the man Cecil should confess?

* For my address in full see Appendix C.



MY ADDRESS TO THE JURY DURING MY THIRD TRIAL

Is it any wonder that the weak Youtsey should have confessed after two years in prison?

“It is all the outgrowth of the inducements offered. My prosecution, or persecution, has been political. It can not be expected that the officers of the Commonwealth will now turn back or confess that they have prosecuted me wrongfully. They can not do so after their treatment of me for the past three years. The prosecution is in the confession business, but it is not making confessions itself. In two other trials the Commonwealth officers prosecuted me to conviction, and they are now trying to get you to convict me again.”

Continuing, I argued that if I were acquitted and it was afterward proved that I was guilty, Kentucky would be held in contempt for a lax administration of its laws; but that if I were convicted and it later developed that I was innocent, the state would be the more keenly criticized and the more deeply disgraced.

“It does not matter,” I said, “if I brought a thousand or ten thousand mountain men to Frankfort; it does not matter about the use of the military; it has not been shown in this case that I had anything to do with the man who murdered Senator Goebel; I had nothing to do with the military, and was not a military officer. The Court tells you in his instructions that you can not believe one conspirator though he is corroborated by another, unless they are both corroborated by some one else.”

I took up the testimony and declared that no one with any degree of intelligence whatever would have permitted the use of his house or his private office as a place from which the shot of an assassin could be fired.

I enumerated the names of the persons arrested and charged with this crime, but not indicted, and declared that it was not the purpose of the Commonwealth ever to try John Davis, Green Golden, Wharton Golden, W. H. Culton, Dick Combs, or Holland Whittaker. I referred to the acquittal of Berry Howard and Garnett Ripley and to the fact that the Commonwealth had admitted to bail all of the alleged conspirators, except Howard and myself, who were still in jail, and Taylor and Finley, who had fled. I pointed out also that all those people named in the indictment with me were now at liberty except myself, and that the officers of the Commonwealth were insisting on the trial of no one but myself.

“If there is a bit of evidence,” I said, “in this case to show that I knew, or had ever seen, Jim Howard before the day on which Senator Goebel was shot, I will admit that I am guilty and agree to a verdict of conviction. The only man who connects me in any manner with Howard is Cecil, who told you that I said to him a man was to come down from the mountains the next day. Youtsey told you that I was to stay out of my office that day, but he did not tell you that I had been told by either himself or Taylor that Jim Howard or anybody else was to do the shooting. I didn’t know Jim Howard; I didn’t know Holland Whittaker; I didn’t know ‘Tallow Dick’ Combs; I didn’t know Berry Howard. That disposes of four of the five men whom the Commonwealth says I secured to do the shooting. That leaves only Henry Youtsey that I could have secured. I will leave it to the testimony in this case to decide whether I was in any conspiracy to secure, or if I did secure Youtsey to do the shooting.

This testimony will show that I never met Henry Youtsey before January first, 1900. It will also show that he never had a word with either me or my brother relative to shooting Goebel from my office or elsewhere on the thirtieth of January, 1900."

Speaking of my speech the *Courier-Journal* said: "In conclusion Powers pictured for the jury his life in prison for nearly four years. He declared that he is not guilty of any part in the crime charged, and that all the jurors and witnesses that could be called would never change his innocence to guilt. He declared that he sought no mercy, but only justice at the hands of the jury, and then made a strong plea for mercy in his case, and for his acquittal, picturing his aged mother in her mountain home awaiting the verdict of the jury."

At the conclusion of my argument, Mr. Franklin, attorney for the Commonwealth, made the closing address in behalf of the state. He delivered an eloquent speech and the jury retired immediately to consider its verdict.

The next day it found the following:

"We, the jury, agree and find the defendant guilty and fix his punishment at death."

While I knew that the jury had been chosen to convict, and that a failure to do so would brand the entire prosecution as a gigantic farce, still I was shocked beyond the power of pen to tell at the appalling infamy of such a verdict.

The court, upon the reading of the finding, commanded me to stand up, and, after calling attention to the paragraphs of the indictment and citing the fact that I had been convicted, he asked me in the custom-

ary form whether I had any reason to give why sentence should not be passed upon me. To this I replied:

“I am not guilty, Judge.”

“If that statement be true,” responded the court, “it is a terrible calamity for you and for the state.”

He then directed that I be returned to the Georgetown jail and there confined until the twenty-fifth of November, and then be taken out and “hanged by the neck until dead.” He gave my attorneys until the eighth day of October to prepare and file their bill of exceptions. This was done and, later, the transcript was prepared and filed with the clerk of the court of appeals. Thus I was granted a respite until my case could be heard and decided by the higher court.

CHAPTER XXXIX

WHERE MY CASE RESTS

Tragic end of T. C. Campbell and peaceful death of former Governor Brown — Court of appeals for the third time declares my conviction illegal and unfair and grants me a new trial — I am awaiting the return of reason and justice

With some of its witnesses now self-confessed perjurers, the prosecution was destined to receive even a more severe blow. This came in the death of Thomas C. Campbell. At the conclusion of my third trial, he was in a most wretched condition of health, and, in truth, was so ill that he was compelled to remain seated during the greater portion of the time occupied in delivering his argument to the jury. He looked then as though his days on earth were numbered.

When the information was conveyed to him that the jury had brought in a verdict of guilty against me and had sentenced me to be hanged, he sent the following telegram to his assistant counsel: "Glory be to God on high." He little knew, perhaps, when he penned these words, what short space of time remained to him in which to rejoice over his victory and the injustice done his fellow man.

He immediately repaired to New York City, and, joined by his wife and son, started on a cruise to the Bahama Islands in the hope of recovering his health. The yacht on which Mr. Campbell sailed, the

Roamer, was wrecked on a coral reef at Rum City. Its passengers escaped with their lives, being carried ashore. The beach where they effected a landing swarmed with pirates and thieves. Among these Mr. Campbell and his family fell. The attorney was too ill to assist himself and, near death, he lay for several days in a little hut built of mud and oyster shells, subsisting on nuts and quenching his feverish thirst with stagnant water.

By the time the rescue of the passengers could be accomplished, Mr. Campbell was, indeed, in a most critical condition. Aneurism of the heart, from which he suffered, had been so aggravated by the exposure and hardships he had endured, that when he was carried aboard the liner, *Orizaba*, he had but few hours to live. He reached New York in a dying condition and, the day following his arrival, his soul passed from earth. Thus ended a most remarkable career of a most remarkable man. And, I might say, in conclusion, "Tread lightly on the ashes of the dead."

It was only a few weeks later that the state of Kentucky was called upon to mourn the loss of one of its greatest sons — John Young Brown. In his death, I suffered an irreparable loss. He was my senior counsel in my first trial, and was as true and devoted to my interests as he was careful, cautious and painstaking as my attorney. So much was said of him in obituary notices at the time of his death, so much was written and spoken of his brilliant career as an orator, lawyer, congressman and governor; of the many noble traits of his character and of his generosity and integrity, that there is little need for me to eulogize him here. In my mind, however, there will remain for

ever the picture of this man as he stood in the courtroom, pleading my cause, pleading for right, for justice and for my life in words of such impassioned eloquence that even the hostile court, the hostile spectators, the hostile jury, heard him in breathless silence, held spell-bound by the powerful argument he delivered. His zeal in my cause was unflagging. Knowing him as I knew him, I am inclined to think there will be ample pardon for my saying that he was almost as great a loss to me as he was to his family and to his intimate friends.

The fact that ex-Governor Brown and Mr. Campbell figured so conspicuously in the Goebel conspiracy trials, and the coincidence of their deaths occurring in such close proximity to each other, naturally suggest a comparison of the manner in which the final summons came to each. Mr. Campbell was called first. Seeking health, he found death. Possessed of sufficient worldly means to command every comfort and luxury, his last days were spent in the midst of the most abject poverty, in the center of conditions from which even the meanest of his kind would shrink. He lay dying in so destitute a state that even a cup of pure water could not be obtained with which to quench his thirst.

Ex-Governor Brown, on the other hand, died in his home, surrounded by a devoted and sorrowing group of those nearest and dearest to him. Anxious friends throughout the length and breadth of his native state waited with sorrow the news of his passing. All that could be done to prolong his life was done, and when, in the end, he found that death could not be averted, he waited calmly and bravely until the end wrapped him in the everlasting unconsciousness of the tomb.

Verily does it seem that the closing days of these two lives exemplified most emphatically the old adage, prophetic in its solemnity: "As a man lives, so shall he die."

It is not impertinent to refer to my own fate. I was a man upon whom the sentence of death had been passed. The sensibilities of one in my position—horrible and awful as it is—are by no means numbed by the terribleness of it, but, on the contrary, are most keenly alive to every pang so awful a fate forces one to suffer. One in such a condition is alert to every incident or event that in any way affects his interests. It can be readily imagined, therefore, that I learned with inexpressible delight that the state of Kentucky and the nation at large had received the verdict found against me with a feeling of revulsion and horror.

In truth, within a comparatively short time, my countrymen were beginning to turn the lime-light of investigation and publicity on Kentucky jury trials, Kentucky courts of law and Kentucky methods of wreaking vengeance on political opponents.

Mr. Samuel Hopkins Adams, in *McClure's Magazine*, fearlessly exposed the hideous conspiracy against my life. Ex-Governor Frank S. Black, of New York, Ex-Governor Richard Yates, of Illinois, Judge H. Clay Howard and United States District Attorney R. D. Hill, both of Kentucky, generously volunteered their services, as counsel, in my further fight. They were gratefully accepted. *Harper's Weekly*, *Collier's*, and other periodicals raised their influential voices in my behalf, and commented in no uncertain terms on the mockery of the law under which I had been convicted and sentenced to death.

In the meanwhile, my case had been argued before the appellate court, but no decision was forthcoming until December, 1904, when, for the third time, the majority of the court decided that I had been illegally and wrongfully convicted, and determined that I was entitled to a new trial and a fair hearing; but as soon as one of the Republican appellate judge's term expired, January first, 1905, and Judge James E. Cantrill, of whom much has been said, took the oath of office to fill his place, the prosecution asked for a rehearing of my case. Their petition was overruled March 25.

It will be remembered in connection with the decision granting me a new trial that, on the former appeals, my convictions had been set aside by the Republican members of the higher court bench, while the Democratic judges continued to vote against me. This time, however, two newly elected Democratic judges concurred with the two Republican members of the bench in granting me a new trial. Three Democratic judges handed down, as on previous occasions, a dissenting opinion. They said, in part: "The record shows that the appellant was (if not the chief one) in the conspiracy which resulted in the assassination of William Goebel." One Democratic judge, however, handed down a separate opinion. It was Judge Henry S. Barker, and in most forcible terms he compared my case with that of Dreyfus, saying: "Those conversant with current history have seen a highly civilized and generous people, under the stress of racial passion, condemn without proof a soldier charged with a political crime, and sentence him without mercy to a punishment worse than death; and, when the storm had spent its force, that judgment was

annulled, the victim was released and all the world, to-day, knows his innocence. I do not believe that any man charged with a political offense, or with an offense originating in a political contest, who is tried by a jury composed of his political opponents, can have a fair and impartial trial within the meaning of the law. . . . The administration of even-handed justice has no more insidious enemy than political prejudice; it enters unseen and unsuspected into the human mind and undermines the judgment. . . . Neither purity of heart nor exaltation of character offers an antidote for this deadly poison. The pages of history are eloquent with the evils of this passion."

Thus are the points of my case disputed, even among Democratic judges, thus is my innocence or guilt argued, while, during the contention, my health is being undermined and my life ebbs away. I await the return of the reign of reason and justice and, while I wait, my friends remain as true and loyal to me as my enemies continue to be bitter and unjust. Friends have given unstintingly of both their time and means; from time to time, they have formed leagues and committees for the purpose of raising funds for my defense—aye, even for my personal comfort. They have upheld my cause and stoutly maintained my innocence, even when business reverses came and social ostracism followed as a result.

To all my friends—faithful friends in all walks of life, high and low—let me extend my warmest and deepest gratitude. To my enemies, let me say: "If you could but understand, your censure would dissolve itself into pity and your tears would blot out what you once thought to be a record of my villainy."

CHAPTER XL

CONCLUSION

My story written under difficulties — I am surrounded by criminals of all degrees — Noise and impertinent curiosity, instead of privacy — Five years in prison and still no final determination of my case — An awakening of the people at hand

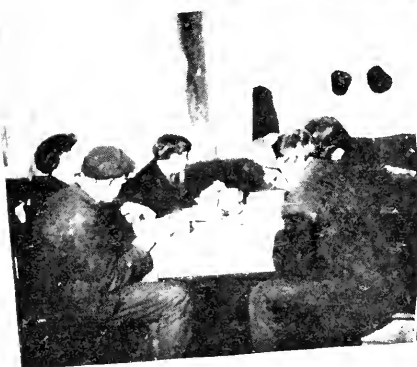
To those who may have expected, in perusing these pages, to find a work of some little brilliancy and color, I must address a prayer for indulgence while I explain under what conditions they were written. The disadvantages that surround me seem to be heaped mountain-high. Even as I write the closing lines of my story in the beginning of this good year, 1905, the room in which I am accorded little more than cot-space is filled with thirteen other prisoners — murderers, thieves, burglars, pickpockets, confidence-men, men in the throes of delirium tremens, and others only a short time convalescent. Some of these are now clumping back and forth across the worn wooden floor in that ceaseless prison plod — the exercise that prevents the man in confinement from going insane.

Behind a thin partition, an old inmate is quarreling with a recent arrival over the latter's disinclination to submit to certain of the jail rules and regulations. Seated on a dilapidated old bench, one of the prisoners is relating to his interested companions deeds of start-

ling adventure and narrow escapes from arrest for crimes he has committed, puffing the while the noxious and ever-present cigarette. Another finds an audience before whom he pours out the story of his jealousy and hatred for a fellow prisoner. The flap, flap, flap of playing-cards, together with the sound of a guttural voice, "I played high," and a piping one, "I played low," added to the discordant notes of a ceaseless mandolin, are wafted over to the lone corner of the room where I sit beneath a grim, heavily barred prison window. The interruptions caused by the visits of curious sightseers have been endless. I am not now confined in the same room with negroes, as had been the case frequently since my incarceration, but the noisy babble and yowling of a score or more of them wells up from the corridors below. There is no privacy; in five years, I have scarcely been able to turn in my bed, cleanse my body, strip for exercise, talk to my friends or even eat my meals, without every movement being closely scrutinized by a horde of evil-visaged, foul-talking, ill-bred criminals.

It has been under such circumstances, surrounded by such obstacles, that I have been forced to live and write this narrative. I beg of the reader, therefore, to be to its faults very blind and to its virtues very kind.

Five years of my life have thus passed since my wrists first felt the pressure of manacles and I began to view the world and life through the bars of a prison window. Technically these five years have brought me no nearer to the veiled finale of this tragedy of prosecution than I was when first I broke prison bread. I am still at the starting point — in jail awaiting trial. It is as though I had been accorded no hearing in the



One of my guards

John R. Pfanz,
my kind-hearted jailer

Prisoners drawing rations

Writing the closing lines of my book

Prisoners at breakfast

Telling stories

past, had never been convicted, and had never been sentenced. Nevertheless, I feel that I have not lost these years. The half-decade that has passed has served me not wholly with evil alone, for, in this time, hatred and passion have in a great measure subsided and many friends have been drawn to the support of my cause. But, looked at in even its most favorable light, five years of my life have been stolen from me — five years, counting by the months of the calendar, but how many, figured by the suffering, the humiliation, the agony, the desperation I have endured, only the Eternal Judge of all judges knows.

Yet, withal, I have not lost faith in the great heart of the great common people. Many of them have suffered. Many of them, Democrats as well as Republicans, sympathize with me in my hours of adversity. Many of them understand. And it is not wholly their fault, if, in many of the rural districts of Kentucky, the Democrats continue to hold a strong prejudice against me and are over-ready to convict me when they serve in the capacity of jurors hearing my case. False ideas have been carefully, systematically and maliciously instilled into their minds and hearts by the frenzy of a partizan press that has lost its sense of right and justice to the individual in its passionate support of its party. And, although my persecution has been a condition precedent to the promotion of any Democrat to office and the true test of modern Kentucky Democracy, still time can alter even this as it has already altered much. Even now an awakening is at hand. Many of those who at first condemned me unheard, and hated me without cause, are beginning to realize that they have been made the victims of

a gigantic political conspiracy, having for its end the life of an innocent man. They no longer are willing to continue as the blind instruments of party passion, party malice and party necessity.

Whether the voice of fair play and common justice will become sufficiently loud in the days to come to ring out through all Kentucky like an alarm bell in the night and thus rescue me at last from the whirlpool of political prejudice, hatred and oppression, I do not know. I am confronted with the realization of the hard fact that, to the Goebelite office-holders and office-seekers in Kentucky, my conviction is still a pecuniary and a political necessity. The one-hundred-thousand-dollar corruption fund is still at the disposal of the prosecution. Five thousand dollars of it is still offered for my conviction, right or wrong, the majority of the members of the appellate court have held that they are estopped by section 281 of the Criminal Code of Kentucky from granting me relief from a "packed jury." My acquittal at this late hour would convince the world that my prosecution had been unspeakably infamous. The prosecution knows this. Many of the trained perjurers, who have testified against me on former trials, will, in all probability, be on hand to try to swear my life away again. But, notwithstanding all this, from the gloom of a prison cell, I send this message to the world:

I am still an optimist; my pulse beats high with hope. The consciousness of innocence and my faith in the wisdom of the world; in the old adages that right *must* triumph and murder *must* out — these are the supports that have borne me up under the crushing weight of the most bloodthirsty cabal of modern times.

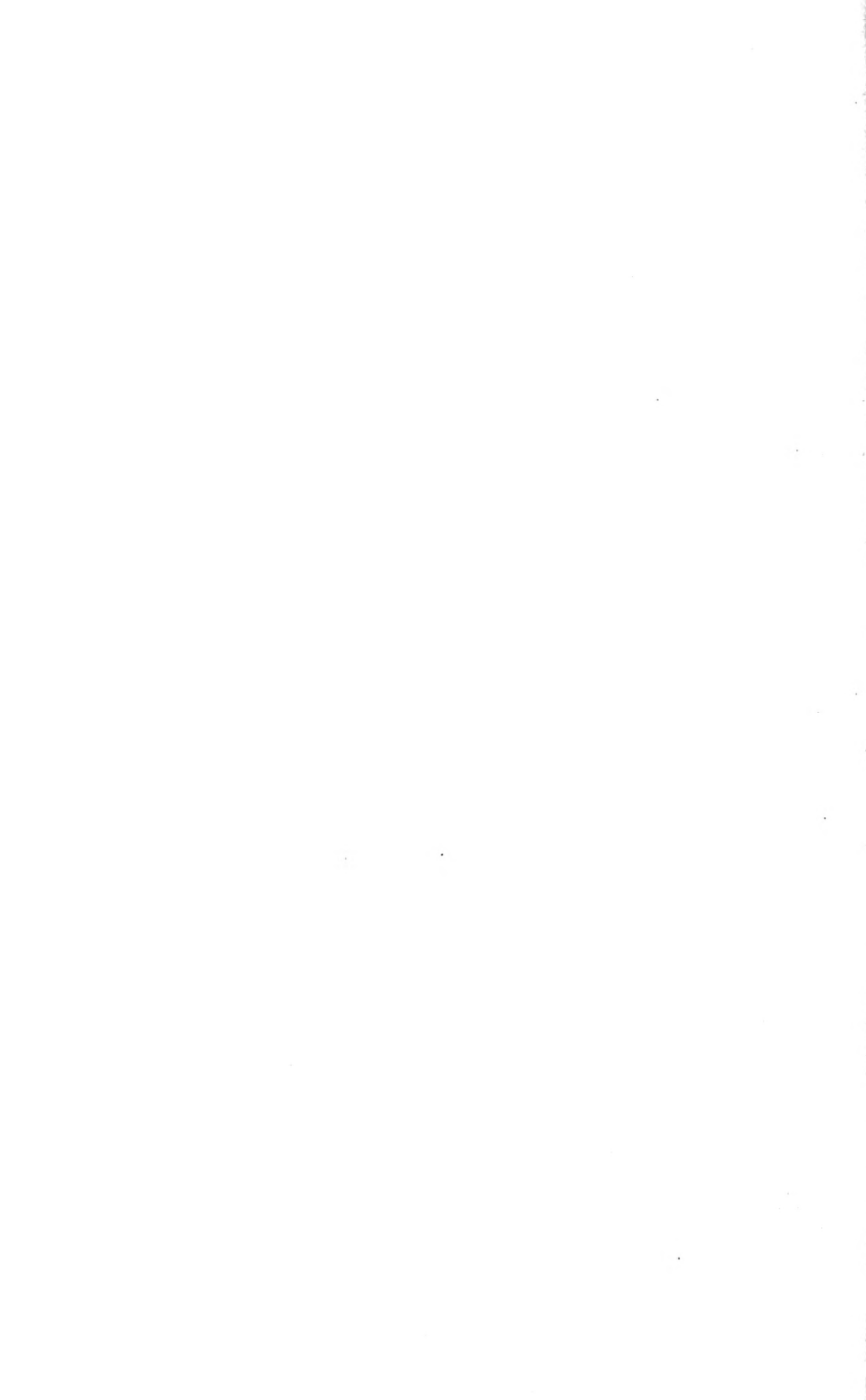
Dreyfus? Mrs. Maybrick? *They had a chance!*

I do not know what the fecund womb of time has in store for me. None can thrust aside the veil that shields his view from the mysteries of the future. We are drifting, sailless, oarless, across the uncharted seas. But, whatever may be the shore to which my bark may bear me, I shall have, as I have now, the consolation of knowing that I battled throughout to the very best of my ability, to the limits of my power, against the odds that opposed me and the storms that broke upon me.

I know that a tremendous force resides in innocence and that Truth and Justice, sometimes slowly, but always surely, are marching on to victory. They may often tread with leaden heels and fail to arrive in time to prevent the havoc wrought in the abuse of their name, but they rarely fail finally. But whatever fate befalls me, I shall have in the end, as I have now, the consolation of knowing that some day my name, at least, will be vindicated.

.

APPENDICES



APPENDIX A

ANDERSON'S AFFIDAVIT

State of Kentucky, }
County of Jefferson. } ss.

I, Finley B. Anderson, on oath, state that I was a witness in the Scott circuit court in July, 1900, for the Commonwealth in the case of the Commonwealth of Kentucky, versus Caleb Powers, and both on my direct examination and cross-examination, while a witness upon the stand in said case, I made statements that were false; and now, in order, as far as possible, to make amends for the injustice and the injury that such false statements resulted in to Caleb Powers, whom I honestly and conscientiously believe to be innocent of the charges of complicity in the assassination of William Goebel, and moved hereto, solely by such desire, do voluntarily, by my own seeking, make this affidavit.

Early in the spring of 1900 I was engaged as telegraph operator on the Knoxville division of the Southern Railway, and went from Knoxville to Barboursville about May tenth. There I met Joe Owens, who stated to me that Mr. Thomas C. Campbell wished to see me in Cincinnati, in relation to becoming a witness against Caleb Powers, who was then under arrest. Owens also told me that if I would go to Cincinnati and see Campbell, I would be given employment there. Owens told me it would not be well for me to be seen going with him to Cincinnati, and by arrangement, I met him at Corbin, Kentucky. Thence we went to Cincinnati together, Owens paying my way. The statement made by me on the Powers trial, that I used a pass on this trip, was untrue. When we reached Cincinnati, which was about the tenth of May, we went to the Palace Hotel and inquired

as to the whereabouts of the storehouse of Lowery and Goebel, and being directed we went to that store and asked for Mr. Arthur Goebel. We were informed by a clerk at the store that Mr. Goebel was not in; and he asked us what we wanted. Upon being informed that it was in relation to the Powers trial, he directed us to Colonel Campbell's office. Mr. Campbell immediately began asking me questions about the presence of Caleb Powers at the Anderson House, at Barboursville, just prior to January twenty-fifth, and asked me if Powers had said why he was going to take to Frankfort the mountain crowd of men. I answered that he had, and that they were going to intimidate the Legislature. Mr. Campbell then suggested to me that Powers had also said at that time that, if necessary, he would kill enough Democrats to have a Republican majority. I told Campbell at that time that Powers had not made such a statement. In my testimony at Georgetown, I did state it to be a fact that Powers had said that if necessary the mountain men would kill enough Democrats to have a Republican majority, but such a statement upon the witness-stand was untrue. Mr. Campbell then told me that Owens had told him that I had said that Caleb Powers, at the Hotel in Barboursville, prior to January twenty-fifth, had used these words, speaking of William Goebel: "If we can not get him killed, and if it is necessary, I will kill him myself." I said to Mr. Campbell that I had never told any one any such thing; and that Powers had not made such a statement to me, or any statement resembling it in any way. Campbell and Owens insisted that I had made such a statement; and I afterward, upon Campbell's suggestion, sat down and wrote out a statement in which I included the foregoing statement of Powers', which was untrue in every particular; and upon the trial of Caleb Powers, I swore to it as a fact, when in truth it was not a fact. I remained in Cincinnati after this conversation with Mr. Campbell; and some time after that, Mr. Arthur Goebel, in his store, up stairs on the fourth floor, where I had gone at his request, asked me if Powers had not, in my presence, in Barboursville, in January, said to me in substance, these words, referring to William Goebel: "They say he

wears a coat of mail; but it won't do him any good," or words similar to that. I told Arthur Goebel that Powers had never said anything of that sort, to the best of my knowledge. He told me to think and see if I could not remember it. I could not remember such a remark, and I know that Powers never made such a remark, or anything resembling it, in my presence; but being urged by Arthur Goebel, I finally concluded to state that he did make such a statement, and so swore upon the trial, which testimony was false. Before making any statement to Campbell, Wharton Golden told me to make it as strong as possible, as they (referring to Campbell and Golden) would take care of me and protect me. I desire now to say that I had but one conversation with Caleb Powers; and that was in relation to my going to Frankfort with the men on the twenty-fifth of January, and at no place was the name of William Goebel mentioned or referred to in any way or in any manner. Upon the occasion of the first conversation with Campbell, or the day after, I received from him ten dollars cash; and since that conversation, I have received from him, before and after I was a witness at Georgetown in the Powers case, various sums of money; and I have, since such conversations with Campbell and Arthur Goebel, received from Arthur Goebel various sums aggregating about three hundred dollars, and upon one occasion ten dollars from Justus Goebel. The last sum I received was on Tuesday, October twenty-third, 1900, which was five dollars given to me by Mr. Campbell at his office in Cincinnati. Just prior to giving me this five dollars, Campbell had telephoned to Arthur Goebel to come to his office, which Goebel did. And when he arrived at Campbell's office, he went into a private room with Campbell, and Campbell came out and handed me five dollars. I believe that my testimony in the trial of Caleb Powers aided in his conviction; and I am unwilling longer to suffer in silence by reason of the thought that the falsity of my statements have aided in the conviction of Caleb Powers. I desire further to say that F. Wharton Golden has received from Arthur Goebel, in my presence, various sums of money at various times, and that said Golden is now living near Cincinnati, at a place named Madeira, under

the assumed name of John McDonald; and while said Golden was living at Erlanger, he was under the assumed name of Clark.

(Signed)

FINLEY B. ANDERSON.

Subscribed and sworn to before me by Finley B. Anderson,
this thirtieth day of October, 1900.

My commission expires January seventeenth, 1904.

CLARENCE E. WALKER.

APPENDIX B

ROBERT NOAKES' AFFIDAVIT

State of Illinois, }
Vermilion County. } ss.

Robert Noakes, being first duly sworn on his oath, deposes and says that he is the identical Robert Noakes who testified in the case of the Commonwealth of Kentucky against Caleb Powers, tried before Judge Cantrill, in the circuit court in Georgetown, Scott County, Kentucky.

Affiant further deposes and says as follows: I took an active part in the campaign between Taylor and Goebel. I was at heart a very substantial Republican, and after the election felt that we had carried the state; and I was in favor of holding it, if we had to resort to any means. I took an active part in transporting men to Frankfort during the time the election commissioners were in session, and up until the inauguration of Governor Taylor and the minor officers. After inauguration, when the contest was filed, I was an open advocate of civil war, and devoted most of my time talking the same and urging the people of my section to take up arms and march to Frankfort. I was very aggressive and made many unthoughted expressions. I raised a body of mountain boys and went to Frankfort with them on the morning of the twenty-fifth of January, 1900. I stayed in Frankfort during the day of the twenty-fifth of January. The day was disagreeable and my men were expecting more of me than I was able to furnish them, in the way of bedding, board, etc. My wife and family were urging me to quit the fight before I got into trouble, as I had already made a considerable number of enemies. On the evening of the twenty-fifth, I went to Charles Finley and told him that I

had decided to take the men back home and asked him to please make arrangements for a train. A short time later, Finley came to me and told me that the train would be ready about eight o'clock. I took my men and returned to the mountains, with the exception of four hundred men, who remained in Frankfort. I went with the men as far as Artemus, and got off there. I stayed at Artemus on the twenty-sixth, and left that evening for Norton, Virginia, arriving there on the morning of the twenty-seventh and taking up my duties as conductor on the Louisville and Nashville Railroad. I heard nothing more from Frankfort until the evening of January thirtieth. I then received a message from Colonel Roger William that Goebel had been shot, and to hold my company in readiness to move to Frankfort. I had promised my wife that I would not take any further hand in the matter, and I did not go to Frankfort, but sent a company in charge of the second lieutenant.

About the time of Wharton Golden's confession, several persons informed me that I would be arrested before the investigation was over, and one or two Louisville papers published the statement that the detectives had secured sufficient evidence to warrant my arrest. I saw the way affairs were going; knew the amount of money behind the prosecution; and knew the bad character of Wharton Golden, believing firmly that he would not hesitate to do anything. I believed that they were as liable to convict me as any other man in the state.

Attorney J. C. Maynor, of Corbin, Kentucky, had been my attorney and legal adviser for many years, and I regarded him as an honorable man. I went to him and asked him about the case. Maynor told me that I would probably be arrested, and that they had considerable evidence against me; although I knew that I was innocent of any conspiracy to kill Goebel, and as I have said before, I knew that with such men as Wharton Golden and Tom C. Campbell directing the prosecution, they were as liable to convict me as any other man. Maynor promised to let me know at any time I was in danger of being arrested.

About May fourteenth, I was in Corbin attending to some

legal business; and while there, I spent a good part of my time in Maynor's office. He apparently was very uneasy, and advised me to get my affairs in shape to leave the country on short notice. I did as he advised me, and returned to my temporary home in Norton, Virginia. I did not see Maynor again until June fourteenth. In the meantime, I had removed from Norton to Big Stone Gap, Virginia. Maynor came there about June fourteenth and had a talk with me. He said that he had been to the Democratic convention at Louisville; that he had met Justus Goebel; and that my case looked rather dark, but that *if I would go strictly according to his advice and not take the advice of any one else in the world, he would pull me out.* I promised to do so, still believing that he was an honorable attorney and had only the interest of his client at heart. A few days later, he told me that he had made arrangements to meet Justus Goebel at Knoxville. I first agreed to go to Knoxville, but then told him to make it Bristol, and finally decided to have the meeting at Big Stone Gap; accordingly Maynor telephoned me to meet Justus Goebel at the Taylor House at Big Stone Gap about the twentieth of June. I went to the Taylor House; when I arrived, I met Maynor in the office. He informed me that the gentleman we wished to see was in to supper; and that we would just step back into his (Maynor's) room. I went to his room with Maynor, and was there introduced to a gentleman who called himself Mr. Kleinmeyer. The gentleman and I exchanged a few words, and then Maynor left the room; as I presumed, to tell Justus Goebel that I was there. The gentleman (Mr. Kleinmeyer) and myself immediately entered into conversation; we discussed the mineral prospects of the surrounding country. After we had talked for some little while he remarked that the country was too damned near to Kentucky to ever amount to anything; I asked him why. He said there were too many murderers in Kentucky; that civilized people would not come there. His remarks slightly offended me. I said that I supposed he referred to the killing of Senator Goebel, and he said he did. I told him that I regretted that Goebel had been killed in the manner that he had; but told him that no man could trample

on the rights of the people of Kentucky and expect to live. *He then said that he supposed I was a friend of Finley and Caleb Powers. I told him that I was. He said, "Then, of course, you believe that they are innocent and ought to be acquitted." I told him that I did not believe either of those men knew any more about who shot Goebel than I did, and I was sure that I knew nothing.* He asked me a few more questions about Powers and Finley in an insinuating way. I very emphatically informed him that I had advocated their cause until the present and was still willing to take up arms and fight for them. At this stage of the conversation, J. C. Maynor entered the room with a sheepish, hang-dog expression on his face, and informed me that I had been talking to the man that I to-day believe to be the most notorious scoundrel in the United States—Colonel Tom C. Campbell. I immediately saw that my attorney was playing a dastardly devil game. *Campbell told me that outside of what I had said to him, he could easily hang me in the state of Kentucky; that men were crowding him who were anxious to give the evidence against me. I believed what Campbell said, and told him that I had no money with which to fight the case; and that now I would take the shortest way out of it, or words to that effect. Campbell told me that if I would do just as he and Maynor said, they would get me out of it without money. From that moment on, I was completely in the hands of J. C. Maynor and Tom Campbell.*

They arranged to have me arrested; and I was arrested on the twenty-eighth day of June by the chief of police of Big Stone Gap, and turned over to Constable H. D. Harrod, of Frankfort, Kentucky, who had requisition papers. He took me to Frankfort and put me in jail on July third. I remained in jail three days. My attorney, Maynor, called on me at the jail, and I told him that he must make some arrangements to get me out immediately. He did so, and I was released in the custody of Constable Harrod, and was kept under his guard until after the case of Caleb Powers was called for trial. I do not know who paid my guard, or my board at Harrod's home; but I know that I did not. I gave Harrod ten or twenty dollars that Maynor gave me to

give to him. I only paid Maynor about twenty dollars for his services. He was at Frankfort and Georgetown with me the entire time. Tom Campbell informed me that Arthur Goebel paid Maynor one thousand dollars.

The first conversation that I had with Tom Campbell after I met him at Big Stone Gap was in his room at the Wellington Hotel, in Georgetown. He sent for me to come to his room. *He then informed me that now they were all going to help me get out of the trouble; and that I would be out in a few days. He then told me that he was ready to take my statement. The nervous strain that I had gone through with had left me almost a total wreck; and I was at all times furnished with stimulants and kept under the influence of intoxicating liquors, and was frequently on the verge of delirium tremens. I had never drunk to excess until after I was arrested, and from the effects of the whisky that I had been taking and my troubles, I sometimes realized that I was not right mentally. In this condition I made a statement in Tom Campbell's room. My lawyer, J. C. Maynor, was in the hotel, and knew that I was making this statement in Tom Campbell's room; but never came to the room. Campbell afterward informed me that I had sworn to the statement before a notary public; but I do not remember of having sworn to it, and I do not believe that I did swear to it. Campbell insisted that I did and proved it by a man that he said was the notary public; this man's name I do not know.*

At the time I went on the witness-stand at Georgetown and swore to the facts contained in this statement, I was still under the influence of liquor; was almost a nervous wreck, and under all circumstances, was not a responsible witness.

After the trial and conviction of Caleb Powers, I went to Frankfort with J. C. Maynor to prepare a bond for my appearance to answer any indictment that might be found against me by the Franklin County grand jury at its next term. We fixed up some kind of a bond, and I and J. C. Maynor signed it. We returned to Georgetown from Frankfort, and I was anxious to leave Georgetown and go to

Crab Orchard, Ky., where my mother resides. This Arthur Goebel, Tom Campbell, and J. C. Maynor objected to; but insisted that I should go to Madeira, Ohio, with a man named Jack Malloy; Wharton Golden and his wife were stopping at this place; and Finley B. Anderson had just left there. (In fact, it was a place where Goebel and Campbell had been farming their star-witnesses). Anderson had stopped there some four or five weeks, and Wharton Golden had gone there shortly after *he had made his confession of facts, which he acknowledged to me he did not know, and which were false. When I arrived at Madeira, I was almost totally without means and immediately began to look for work. I went to Arthur Goebel's place on Elm Street in Cincinnati, and asked him to assist me in securing a position; we were then in his private office; he took me back into the rear of his store, and we had quite a long conversation. Goebel told me that he did not want me to return to work, but that he wanted me to return to Madeira, Ohio, and rest, and think up what I could on the men that were next to be tried. I told him that I scarcely knew Jim Howard and Henry E. Youtsey. He told me it was not so much what we knew as what we would swear; he then took fifteen dollars out of his pocket and gave it to me, slapped me on the shoulder and told me to brace up and not weaken, and that everything would be all right; that there was a lot of that one hundred thousand dollars left yet. I told him that I wanted nothing further to do with the cases, and that I was a ruined man and only wanted a chance to make an honest living. He told me that I was nervous; to go down and get a drink and return to Madeira and wait a few days, and he would fix me all right. I returned to Madeira and remained a few days, and again returned to Cincinnati, in company with Wharton Golden. Golden told me that he was out of money, and would have to see Goebel and procure some means. Golden left me on Fifth Street, in Cincinnati, and I saw him go into Goebel's place of business. In a short while he returned and displayed some money. I think there were fifty dollars. He told me that he had also fixed up a check and sent it to the Wellington Hotel, at Georgetown, seventy-nine*

dollars, to pay his board while there in the Caleb Powers trial. *He boasted to me that Goebel told him that he could get any amount of money he wanted.* He also informed me that Tom Campbell had returned to town and wanted to see me; but he said before we went to Campbell's office we would go and get dinner, and something to drink. He started to the Manhattan restaurant for dinner, and on the way took several drinks. Golden always took lemon soda and urged me to take whisky. By the time we reached the Manhattan, I was again under the influence of liquor. We ate dinner and started to Campbell's office. On the way Golden told me that he knew a saloon that handled the finest brandy in Ohio; and that we would go by and sample it. We went to the saloon; Golden called for brandy for me, and took lemon soda again for himself. This was simply a continuation of the drinking spell that I had been on since my arrest. We went to Campbell's office and found him there; we had a short conversation. Golden and Campbell left the private office and went into a hallway and left me lying on a sofa. They were gone for some time, and when they returned they were accompanied by Arthur Goebel; they all three came into the office, and laughed and joked with me about being tired. *Goebel had a volume of the evidence that was taken in Caleb Powers' case at Georgetown. He gave it to Golden, and told him to take it and read it, so he would not make any mistakes in the next trial. I afterward found this book, containing the evidence of Wharton Golden, which he (Golden) spent considerable time reading while at Madeira.* On this day, Campbell asked me if I were not short of funds, and gave me twenty dollars; I returned to Madeira and remained there a few days; got soberer than I had been since I was arrested; became disgusted with myself and determined to leave Ohio and find employment. I went from Madeira to Cincinnati; from there to Indianapolis; thence to Crawfordsville, Indiana. *I remained in Crawfordsville a few days, and then returned to Frankfort to answer any indictment that might be found against me. While I was there, the Howard case was being tried. Campbell sent for me to come to his room at the Capital Hotel. I went to his*

room; he was alone; he locked the door and sat down close to me, and said: "Bob, we have not sufficient evidence to convict Jim Howard; and I don't know where in the hell we are going to get it, unless you can help us out." I told him I could not do anything, as I scarcely knew Jim Howard. He told me that I could help him in another way. I asked him how. He then told me what John L. Jones was going to swear to; and what I afterwards learned he swore, and said: "Now, Bob, we fixed Jones for three hundred dollars; and we want Dave Chadwell to swear that Jim Howard came to him shortly after the mountain militia arrived at Frankfort and told Chadwell that he (Jim Howard) had fired the shot that killed Senator Goebel from the window of the secretary of state's office; and that Henry E. Youtsey, Berry Howard, and Dick Combs were in the secretary of state's office at the time the shot was fired; and that Howard said: "By God, we want you mountain men to stay with us and see that we are not arrested." I told Campbell that I did not think this was good policy; that if these men were not guilty, why should he or anyone else want to punish them. He laid his hand on my shoulder, and looked at me and said: "Bob, the Grand Jury is still in session. I am employed in these cases to hang somebody, and I could yet hang you, but I have no inclination to do so; that is, if you do the right thing by me. I am going to break Jim Howard's neck, and I need the evidence I spoke to you about to do it with. I have five hundred dollars here to pay for that evidence. We got John L. Jones for three hundred dollars, and if you work it right, you can secure his friends for the same amount, and you will have two hundred dollars left to your credit. I realized that Campbell was a cold-blooded murderer, and determined not to lend any assistance to his schemes, but promised him that I would approach Chadwell and see what could be done. I kept promising Campbell each day that I would see Chadwell, and he kept urging me to do so. Finally, I invited Chadwell to go fishing with me on the Kentucky River, and let Campbell know that we were going, and promised him that I would on that day fix things with Chadwell. We went fishing, but I never said anything to Chad-

well about that matter. I that night met Campbell at the Capital Hotel. I told him that I approached Chadwell on that subject, and found that he was not a safe man; and that he had better try to make some other arrangements. *Campbell was in very high spirits, and said that it did not make so much difference after all; that he had fixed things for less money. Campbell then told me that he wanted me to circulate a report around town that Charles Finley had told me at Corbin that Jim Howard had offered to kill Goebel for two thousand dollars. I told him that Finley had not told me this; he said, "Damn the difference"; that he wanted to create a public impression; and besides, "I have a statement in my office in Cincinnati, made and signed by you to that effect."* I told him that I did not remember to have made such a statement, but he insisted that I had, and said that he would show me the statement the next time I was in his office. I accordingly told several people that Finley had made the above statements, and a few days later, this statement was published in the *Courier-Journal*. I remained in Frankfort until the verdict was rendered in the Howard case, condemning, as I firmly believe, an innocent man to death. A few minutes after the verdict was rendered, I met Tom Campbell, and he told me to go to the foreman of the jury and congratulate him, and tell him that I believed they had convicted the right man. I went to this man, and in a sarcastic way told him I believed he had convicted the right man; and that I hoped that his conscience did not hurt him. I then went to the Capital Hotel. Campbell again asked me where I was when Howard was convicted; I told him that I was in the jail with Green Golden. He said: "Good; I had given out a statement that Howard told you if he never met you on this earth, he hoped he would meet you in hell;" and that if any one asked me if Howard made this statement, for me to say he did. I left Campbell shortly, and went out on the street, and several people asked me if Howard had made this statement to me. I, coward that I was, said that he did. Howard never made this statement to me; and it was but the imagination of Tom Campbell's devilish brain that concocted such a story.

I hope when the friends of Howard read this statement from me, they will not censure me too hard; but will remember that I was completely in the hands of the enemy. *It has always been my intention to right these wrongs as far as possible.*

After the excitement and worry attending the trial of James Howard, at Frankfort, I was again almost a mental wreck, and more fit to be the inmate at a lunatic asylum than to be running at large in the country. On the day that the verdict was rendered in the Howard case I had a long talk with Campbell in his room at the Capital Hotel, in which he tried to persuade me to enter into a plan to betray Charles Finley, and get him into Kentucky. I left Campbell about dark with a promise to meet him again that night. And not knowing why I did it, I walked directly from the hotel to the depot, caught a C. and O. train, and went into Louisville; there I hurried across the city, caught an L. and N. train, and regardless of the danger, started to the mountains to see my wife, whom I had not seen for four months. I left the mountains on the day of my arrival, and proceeded to Evansville, Indiana, where I remained until the Youtsey trial was called at Georgetown. I then returned to Georgetown as a witness in this case. As soon as I arrived at Georgetown, Wharton Golden came after me to go to Campbell's room. I went to Campbell's room and had a long talk with him. He told me that we had the hardest fight yet to make; and that he expected to hang Henry Youtsey; but he said Youtsey had more money behind him, "and we have a damned sight harder job than we have ever had." I asked him where his strongest testimony was against Youtsey. He said that Wharton Golden and Bill Culton and John Ricketts were all strong witnesses against him; but he did not believe that they were sufficient to do what they wanted done. He told me to look around among the mountain men that would be down there, and see if I could not find some one that could remember some damaging evidence against Youtsey, and wanted to make some easy money. I told him that I did not think I could secure any man of that pattern. I had had about all of Tom Campbell's bulldozing that I expected

to take, and had made up my mind to stop the farce trial if it was possible. I spoke my mind pretty plainly to Campbell that night, and told him that if he made any attempt to injure me in any way, I would certainly kill him. Campbell then became very docile and persuasive. He ordered some whisky from down stairs, and persuaded me to take a drink. I had not been drinking anything for a few days. I took the drink, and he talked with me for quite a while and tried to impress me that he had only my interest at heart. The night after Youtsey broke down during his trial, Campbell sent for me to come to his room. He seemed to be greatly worried, and talked to me for a short while, and then said: "Bob, that damned fool's breaking down has put our case in a bad shape; we are going on with the trial in spite of hell; and I am afraid that if we do not have more evidence the people will not stand for his conviction in his present condition. Now," he said, "we may as well call an ax an ax; you are a pretty shrewd fellow, and have lost considerable money in these cases from start to finish. *I have eight hundred dollars here which you can see is good money. It is yours if you will swear that Henry Youtsey told you in the presence of Charles Finley that Goebel had to die in the next five days if he had to kill him himself.*" He said that I was to state that this conversation took place late on the evening of the twenty-fifth of January; and that if they asked me on the stand why I did not state this in the Powers trial, I was to answer that I was trying to shield Charles Finley. I let Campbell complete his proposal, and then told him that I thought he was the damnedest rascal that it had ever been my misfortune to meet; and that I was going to Crawford, Youtsey's half-brother and attorney, and tell him the whole damned affair. Campbell asked me if I was going entirely crazy; he said that he still held the winning cards; that he could prove by a dozen of his men that I was not in his room at all. Knowing his men as I do, I do not doubt that he could. However, Campbell seemed to be afraid of me after this, and immediately commenced trying to persuade me to again commence drinking. I took several drinks that night, continued to drink during the next day, and by the next

night had become very disagreeable and exceedingly anxious to kill some one. I procured a pistol, and went to the room of Wharton Golden, with the intention of killing him, believing then, as I do now, that he, and he alone, is responsible for the trouble in Kentucky. I found W. H. Culton in Golden's room. I handled the pistol so recklessly that soon Culton left; Golden became suspicious, and soon followed him. He went to Campbell's room, as I afterwards learned, and they sent some one to take me to my boarding-house. I went to my boarding-house and slept until late the next day; I then went down to the Wellington Hotel, and some one told me that Campbell was looking for me. I went to his room, and he urged me to go to Cincinnati and stay there until he came. I was trying to secure a position on the Big Four Railroad out of Cincinnati, and, as Campbell said he had some influence with those people, I waited a few days for him to come there. He returned a few days after the verdict was rendered in the Youtsey trial. I met Mr. Campbell in his office in Cincinnati. He was very much worked up over the speech that Colonel Nelson made, and seemed to think that Nelson had given him the worst of it. He said that if it had not been for Nelson, they would have hung Youtsey and it would have been more money to him. He was very bitter toward Nelson. Early in the afternoon of the same day, I went out to see the Big Four people, but failed to secure the position that I was looking for. I found Campbell in his office, busily engaged in getting up an article for the newspapers in answer to Colonel Nelson's speech. He seemed to be in worse humor than in the morning. I informed him that I failed to get the position that I was expecting at the Big Four, and that I guessed I would leave Cincinnati. He told me that he did not want me to leave Cincinnati, but to stay there at his expense; and they would secure any kind of position that I wanted in a few days. I worked a few days in Cincinnati for the Stone Lake Ice Company and left the city. Since then my wanderings and conduct in no way had any bearing on these cases.

APPENDIX C

MY ADDRESS TO THE JURY DURING MY THIRD TRIAL. DELIVERED AT GEORGETOWN, KEN- TUCKY, AUGUST TWENTY-SEVENTH AND TWENTY-EIGHTH, 1903.

May it please the court, and you also, gentlemen of the jury: I know that you must be tired listening to argument, but if my strength and this intense heat will permit it, I desire to say a few words in my own behalf and concerning whose life and whose liberty, you have taken upon yourselves a solemn obligation to deal. In doing so, I exercise one of the privileges which our lawmakers, in their wisdom, have vouchsafed to every person accused of a crime within the confines of our Commonwealth. I would not, however, take advantage of this provision of our law, but for the fact, that for over three long years I have been forced to lie in the jails of this state, classed as a criminal, branded a murderer and denounced an assassin.

I have borne in silence, and with what fortitude I could, these grave charges, together with two adverse verdicts, at the hands of my fellow countrymen. I now feel that I owe it to myself to be heard. Over three years ago, I was torn from a high official position to which I had been elevated by the people of this great Commonwealth; thrown in jail and charged with the commission of an atrocious and cowardly crime. The Legislature of our state, in the excitement of the hour, and actuated by motives of hatred and revenge, appropriated one hundred thousand dollars of the people's money with which to prosecute me, twenty-five thousand dollars of which sum was set aside for the investigation of clues; in other words, that amount was to be paid to detectives to furnish the needed proof. In addition to that, a large sum

was offered and hung up as a tempting morsel for my conviction, right or wrong.

With such inducements as these, and under all circumstances and surroundings in this case, is it any wonder that Weavers have wandered from the distant peaks of Colorado to get their hands into that filthy sum? Is it any wonder that perjured scoundrels of the brand of Noakes and Anderson found their way to the witness-stand during my trials, and swore to prepared and infamous falsehoods against me? Is it any wonder that weak and base humanity of the character of Golden and Culton began to swear and continued to swear for immunity?

Is it any wonder that the assassin-hearted Cecil, after having wandered this weary world around, from Kentucky to Kansas, from Kansas to California, from California to Kansas and from Kansas back to Kentucky, should finally find his way to the home of the prosecuting attorney in this case; there be given a comfortable night's lodging — *par nobile fratrum*; from there be taken before the grand jury the following morning to tell such a story as would continue to him his liberty under the forms of law? Is it any wonder that the weak and villainous Youtsey, after having spent more than two years in the penitentiary of this state, should emerge from that living tomb, when he sees, or thinks he sees, through his testimony a ready chariot to the green and inviting fields of freedom? We should not be surprised at such happenings; they are the natural outgrowth of such conditions and inducements.

Since the very day of my arrest, my conviction in this case has been both a pecuniary and a political necessity. It is more so to-day than it has ever been. The prosecution can not now well afford to admit that they have hounded to the earth for three years an innocent man. They can not now well afford to admit that they did me wrong, when I was deprived of my office and thrown in jail. These would be bitter words for them to be forced to utter: "We have charged this young man with murder wrongfully; we have torn him from an office of trust and honor; we have lodged him in jail; we have carried him from one bastille of this state to another, in chains

and irons ; we have thrown him behind gnawing bars in prison life ; we have forced him to stay in the same steel cages with worthless negroes and to have them for his daily companions ; we have inflamed the public mind against him through a servile press, with hideous stories of an awful conspiracy in which we believed him to be implicated. We have tried him in our courts by his enemies, politically, and we have convicted him ; but in all that we have been mistaken, in all that we have done wrong." It is true that the prosecution is in the confession business, but they are not going to make such a confession as that ; nor will they permit you to bring in a verdict of " not guilty " in this case, if it is within their power to prevent it.

We have heard a great deal said during the progress of this case, and especially by Colonel Hendrick, about the prosecution having no interest in the conviction of an innocent man. He said that the Commonwealth could have no sort of interest in my prosecution, unless I was guilty of that with which I am charged. And for the purpose of adding plausibility to their argument, they have said that Arthur Goebel would not, for his right arm, lend aid or encouragement to the prosecution in this case unless he knew beyond all doubt, founded upon reason, that I am guilty of that with which I am charged ; and Mr. Franklin has said upon former trials of this case, and I presume he will say upon this one, that he is a sworn officer of the law, gentlemen of the jury ; that no filthy lucre of any kind lingers in his pocket to swerve him from his duty one way or the other ; that he is doing his duty to his country, his conscience, and to his God. I say, men, we should not be surprised at such pleas and speeches on the part of the prosecution. This is not the first time in the history of these cases that the life of an innocent man has been asked by these gentlemen.

In the trial of poor old Berry Howard, over at Frankfort, Mr. Franklin called him a monstrous, murderous, frozen-hearted assassin, and asked that his life go out upon the scaffold. Mr. Franklin was then doing his alleged official duty ; and he is prosecuting me now in his alleged official capacity. Mr. Franklin was mistaken about the guilt of poor old Berry

Howard because the jury said in that case: "We, the jury, agree and find the defendant not guilty." Mr. Arthur Goebel was present upon that occasion and was lending aid and encouragement to the prosecution. He, no doubt, believed Berry Howard was guilty of the murder of his brother. There is no doubt he believed it. He was relying upon the word of Henry E. Youtsey. Youtsey had told him on the very day of his arrest that he had let Howard into the private office of the secretary of state with Dick Combs, Jim Howard and others. Mr. Goebel believed Henry E. Youtsey and upon that belief in Youtsey's story, he had an innocent man dragged from the mountains of Kentucky, and put upon trial for his life.

And in the trial of Captain Garnett D. Ripley, the papers had it that Mr. Franklin made one of the most powerful efforts of his life; that he spoke for four long hours and asked the jury to take the young man's life from him.

Mr. Arthur Goebel was present aiding in that prosecution. In the belief of the guilt of Captain Ripley Mr. Franklin was mistaken and Mr. Arthur Goebel was mistaken, because the jury in the case of Captain Garnett D. Ripley said: "We, the jury, agree and find the defendant not guilty." And they sent him to his home. So this is not the first time, men, in the history of these cases, that the prosecution has been mistaken and Mr. Goebel has been mistaken in his pursuit of a man he believed to be implicated in the murder of his brother. The truth is, men, that the prosecution in this case is almost crazed for a verdict of guilty. They feel that a verdict of acquittal at your hands would break the backbone of their alleged conspiracy; and for this to be done at this particular time, with Taylor and Finley yet at large and yet to be tried, and with the coming state campaign on hand, would be a serious blow to the hopes and the purposes of the prosecution. They keenly appreciate the necessity for a conviction, and in order to accomplish it, men, they have stopped at hardly anything in this case; but, upon the contrary, they have stooped to a great many things. They have attacked my integrity in the open; they have trampled under foot my liberty; they have tried to grind my honor into atoms, and they have even

gone to the extent of attacking the integrity of you gentlemen in the back and by stealth, and at the same time professing friendship.

Leaving out of view the fact that it is always unpleasant to sit in judgment upon such sacred rights of one of your fellow men, your position in this case from another viewpoint is by no means an enviable one. *Truth to speak, men, they are relying more upon your political affiliations for a verdict of guilty than they are upon the law and the testimony, and the oath you have taken to give me a fair trial.* I think I can make that clear to you.

The county of Bourbon, in 1896, gave McKinley a majority of over four hundred votes; and in the campaign of 1899 it gave Taylor a majority. Taking the McKinley vote as a basis, had there been no distinction made on account of politics, there ought to have been serving on this jury about seven Republicans and five Democrats. And yet in the face of this fact, and divers others like unto it, the prosecution maintains that politics has nothing to do with the trial of this case. Mr. Campbell and Mr. Hendrick have gone to the extent of saying that whatever politics have been injected into this case, have been injected into it by the defendant. Injected into it by the defendant! What interest, pray tell me, has the defendant in injecting politics into this case? If there is one thing more than another in which the defense is interested in, it is, in keeping politics out of this case. If there is one thing more than another in which the defense is interested in, it is, that this case be tried in the spirit of truth and inquiry, and not in the spirit of political hatred and revenge. What could it profit the defense, pray tell me, to draw the bow across the strings of political passion when eleven of those strings are Democratic strings and, possibly one, a Republican string? Politics has been injected into this case, men, not by the defendant, but by the prosecution; and I think I can make that clear to you, gentlemen.

The statutes of our state provide that it is the duty of the jury commissioners to place within the jury-wheel the names of sensible, sober, discreet house-keepers of the county, over twenty-one years of age, and residents in different portions

of it. These are the qualifications and the only qualifications that jurors are required to possess; and when the sheriff is sent out over the country to select men to do jury service in this, or any other case, these are the qualifications and the only qualifications that the jurors are required to possess. There is no provision in our law which says that Democrats only shall do jury service. There is no provision in our law which says that Republicans shall not do jury service. The laws of our country do not take into consideration the politics of the juror. That being true, men, there must be some reason why there are eleven Democrats doing jury service in this case and possibly one Republican. There must be some reason why there was not a single Republican on the jury that tried me the last time I had a trial, although one-half of that jury came from the good county of Bourbon. There must be some reason why there was not a single Republican on either one of the juries that tried Jim Howard; not one on the jury that tried Berry Howard; not one on the jury that tried Captain Ripley; not one on the jury that tried Youtsey.

It will not do to say that Democrats always *happen* to be selected to do jury service in these cases. It has *happened* thus in too many cases and too often. It will not do to say that the jury commissioners always "*happen*" to place within the jury-wheel the names of Democrats and never *happen* to place within the jury-wheel the names of Republicans. It will not do to say that if the jury commissioners do "*happen*" to place within the jury-wheel the names of a few Republicans; and the names of a few Republicans "*happen*" to be drawn from the jury-wheel, or the sheriff in his perambulations over the country "*happens*" to summon a few Republicans to do jury service that the prosecution almost invariably "*happens*" to reject those particular Republicans from jury service. It will not do to say that out of one hundred and seventy-six men summoned in this case, at this trial, from a county that gave McKinley over four hundred majority in 1896, that one hundred and seventy-two of these men thus summoned "*happened*" to be regular Democrats and but four *happened* to be Republicans, and none "*happened*" to be Independent Democrats. It won't do to say that Mr. Franklin

"*happened*" to exhaust one of his peremptory challenges in this case, upon one Charles W. Penn, a Republican, when this jury-box was first filled, and when there were eleven Democrats subject to peremptory challenge. Have you ever asked yourselves the question since this trial began: "What is it that peculiarly fits me for jury service that unfits my Republican neighbor? What are the qualifications that I possess that make me a competent juror in the eyes of the prosecution that my Republican neighbor does not possess, and make him incompetent?" These are serious questions, gentlemen. What is it that a man must possess to make him a competent juror in this case or in these cases that is neither prescribed by the laws nor the statutes of our country? The Republicans possess all the statutory qualifications. In the eyes of the law they would be competent jurymen. Then what is it that a man must possess to make a competent juror in this case that is neither prescribed by the laws or statutes of our states? What can it be? Have you ever asked yourselves the question, Mr. Ingalls, what can it be? I will tell you. You must in the past have voted the straight Democratic ticket. And why must you in the past have voted the straight Democratic ticket before you are permitted by the prosecution to serve as a juror in this case? The reason is, that they expect you to vote the straight Democratic ticket in the rendition of your verdict. Be not deceived about it. To say the least of it, they expect your political affiliation to help you render that verdict. Then in what attitude are they placing you men before the communities in which you reside and before the eyes of the world—relying upon your political affiliations for a verdict of guilty, whether the law and the facts authorize such a verdict or not. If I were you, men, careful of my good standing in the country and jealous of my honor, I would certainly resent any such imputation upon my integrity, whether those imputations came from friend or foe.

I am a Republican, gentlemen. I have never had any apologies to make for my Republicanism. I have none to make now. You gentlemen are Democrats and you have a right to be Democrats. You have a right to affiliate with whatever

political party you believe to be to the best interests of this country. The man who would deprive you of that right is an intellectual thief and robber at heart. But no man has the right—no set of men have the right, to expect of you a certain sort of verdict by reason of your political affiliations, when you have entered the jury-box and have taken the solemn oath that you took to try me from the law and the testimony. Doubtless you gentlemen are saying, in your hearts, that it does look as if the prosecution has had a sinister motive in this. Doubtless you are saying in your hearts that, if the prosecution is relying on our political affiliations for a verdict of guilty, they are relying upon a broken reed. There is not an honest man on this jury but what is saying that in his heart. Doubtless you are saying that your political affiliations shall have nothing to do with the rendition of your verdict, one way or the other. There is not an honest man on this jury but what is saying that in his heart; not a one, my friends. Doubtless you are saying that you have no bias or prejudice in this case, one way or the other, and all that may be true; and yet you may be mistaken about it. I am told that there are certain fever districts in some of the states of this Union, notably in Florida and Missouri, where, so long as one remains at a certain elevation above the sea level, he is immune from the dreaded fever; but that so soon as he descends below the safety line, and comes in contact with the germs of the disease, he contracts it. If you were a stranger in that country and should go down and drive out and some one should say to you: "You have contracted the fever," you would say: "You are very much mistaken. I never felt better and freer of disease in all my life;" and yet, without your knowing it, you would have contracted the fever. And you, gentlemen, may have come to this case with that fever of prejudice of which you are not aware. Such a thing is possible.

I know that you men have heard of me. I know you have heard a great many things said about me that are untrue. I know that is a fact. The truth is, that the question of my guilt or innocence has long since become a political question in this state. You know that the Democratic papers, from

the great dailies down to the little country organs, have continuously and vociferously proclaimed that I am guilty. The Republican press, on the other hand, says I am innocent. Political campaigns have been waged in this state upon that question. Politicians have been elected to office and others have been defeated for office in proclaiming the one or denying the other. It has become a political question throughout. On the one hand stands the great mass of Democratic voters throughout the state, who have been taught to believe that I am guilty. On the other hand stands the great mass of Republican voters throughout the state, who believe I am not guilty. You know that. The communities from which you gentlemen came are divided on that question to-day; and they are divided on it, in the main, as you know, along political lines. The affair generated in political strife and excitement. The Democratic leader of the state was killed—shamefully murdered. The Republicans were charged with that murder, and it is almost impossible to take politics from this case. It is a difficult matter not to make up one's mind about a thing when it is in everybody's mouth; when it is discussed through the newspapers, from the pulpit, on the hustings, at the country cross-roads, and at the country stores.

Some of you men said that you had formed opinions in this case. You, Mr. Layson; you, Mr. Wyatt, and you, Mr. Mitchell, said that you had formed opinions, and that you were afraid to risk yourselves and afraid to trust yourselves to give me a fair trial. Others of you said that you had formed opinions in this case. You, Mr. Wilson, said that you would go into the jury-box with prejudice and that that prejudice would have to be removed by testimony. You, Mr. Ingalls, said that you had an opinion formed, and both of you, Mr. Estes, said that. Others of you said you had not formed any opinion. You said that, Mr. Ryan, and you, Mr. Booth, and you, Mr. Hill; but you may have come to this jury-box, like the man out of the fever district of Florida, having that germ of prejudice and bias of which you are not aware; such a thing is possible. And in the name of all that is dear and sacred, I ask you to rid yourselves of all feelings of hostility,

bias or prejudice that you may feel towards me by reason of my political affiliations, if you have any, or by reason of the prejudice you have against the section of the state from which I come, if you have any, and give me that same sort of fair and impartial trial that you would give one of your neighbor's boys. Whatever may be my politics, whether good politics or bad politics, it does not alter the fact that I am a citizen of this Commonwealth and a human being, and entitled to a fair and just trial at your hands. Whether the section of the state from which I come be a good section or a bad section, it does not alter the fact that I am entitled to a fair and unprejudiced hearing at your hands; and I believe that you are going to do what you can to give it to me. I believe that. But I ask you to bear in mind that we are all a frail, weak, short-sighted set of human beings in this world; and that our prejudices and likes and dislikes have a great deal to do in controlling our conduct throughout life. The prosecution know this; and, as I say, they have had you summoned here in the hope that your political affiliations would write for you a verdict of guilty. How insidiously has the poison of political prejudice and revenge been injected into this case! Everything has been done and said that could be done and said to make you gentlemen have contempt for me. You know that. The mountain people have been sneeringly referred to. Mr. Hendrick called them murderers, and marauders, red-handed assassins and black-hearted villains. That conduct on the part of the prosecution is neither fair to you nor to me. It is not fair to you because it is an effort on the part of the prosecution to have you convict me by reason of your prejudice, and none of us is without it. It is not fair to me, because it is an effort on their part to have you convict me outside of the law and independent of the testimony. I think the prosecution should deal fairly with you, gentlemen, and with me; and I think we should deal fairly with each other; and, as far as I am individually concerned, I propose to deal fairly with you in the discussion of this case; and I desire to say to you now that if I advance any argument that does not seem to you to be reasonable and right, I ask you to reject it. If I misquote or misstate

any of the testimony, I beg of you not to consider it, because you ought not to. I think we should deal fairly with each other, men; and if I properly understand the mission of an advocate before a jury, or of a lawyer, or client in the argument of a case, it is not, or should not be, to misquote or misrepresent the law or to dwarf or twist the evidence to suit one's own ideas in any individual case.

Argument before a jury should never be used for the purpose of artfully covering up the salient points of either the law or the testimony to the end that the jury may be induced to bring in an unjust verdict, unjust either to the state or unjust to the accused. So far as I am individually concerned, I know that I am gifted with no such words, or worth, or power of speech to force you either beyond the law or the testimony in the case, if I had desires of that character, which I have not.

These gentlemen prosecuting me here have been given all the advantages that this glorious blue-grass country and other favored sections of our land afford, while my home and life have been cast among people whose advantages have been poor, whose means have been limited, and whose opportunities to fit their sons and daughters to cope with their fellow men have been of the worst. Besides, men, as you see, I am a mere boy, unaccustomed to making speeches like these able and adroit lawyers. I have no power to write my innocence on your hearts and engrave it on your bones, as justice in this case says it ought to be done. If I had the same power of speech and the same force of logic as my friend, Mr. Franklin, I could convince you, almost before my argument began, that the harming of Mr. Goebel never entered my heart; and that I am the worst abused and persecuted man ever accused of crime on the American soil. But these extraordinary gifts, men, I do not possess; and I shall, therefore, have to ask you to go over the law and the testimony in this case in a commonplace way; and if I can be of any aid to you in arriving at a correct verdict, I shall feel that I have discharged my duty fairly and faithfully to you and been of service to myself. I ask you to let us reason together.

If you have me convicted in your hearts already; if you feel

that I am a guilty assassin and you regret that you were brought into this close contact with me, if during the progress of this trial your ears have been open and anxious and ready and willing to catch everything of a damaging nature brought out against me and have turned a deaf ear to all that has been said on the side of the defense, then any effort on my part to convince you that I am an innocent man would be a waste of my needed vitality and a useless consumption of your time. But you, gentlemen, will not do that. You have taken a solemn and impressive oath: "I do solemnly swear that I will try this case according to the law and the testimony and a true verdict render, so help me God;" and so far as within your power lies, I believe you will keep sacred that solemn oath. Whatever may be your religious tenets, whether believer or unbeliever, Catholic or Protestant, Jew or Gentile, whatever may be your political affiliations, whether it be that of a Democrat or that of a Republican, the oath you have taken has within it a mighty force, that ought to lift every man who takes it out of all political bias and prejudice. So far as our weak and imperfect nature will allow us, it ought to lift us into a region of absolute duty and absolute truth. When your verdict is rendered, the testimony and the law in this case ought to authorize and justify you in that verdict. You have raised your hands between your heads and heaven and called Almighty God to witness that you would render a true verdict in this case. The eyes of a proud Commonwealth are upon you; aye, the eyes of a great nation are turned towards the scenes of this trial. The prayers of a justice-loving people are with you in the rendition of such a verdict that innocence merits, right demands, your heart sanctions and your consciences approve. I have always believed that the right in this case would in the end prevail. Seasons in and seasons out, years in and years out, through dark fortunes and through bright, (if there have been any bright), I have continued pleading and appealing to my fellow countrymen; and I am now particularly pleading and appealing to you, gentlemen, to end this long and bitter controversy in a way that justice demands, right approves and your hearts sanction.

I am sure you will agree with me that when it is ended it ought to be ended in such a way that no harm shall befall an innocent man and that no guilty man shall go unpunished; and I am sure you will agree further that when it is ended it ought to be ended in such a way as shall be a credit to Kentucky for her sense of fairness and justice in dealing with those accused of the infraction of her laws. If you, men, should render a verdict of not guilty in this case and it should turn out within the next week or within the next year that I am guilty, then Kentucky would be held in just contempt for the lax administration of the law; if upon the other hand you should find a verdict of guilty in this case and it should turn out within the next one hundred years, as it will turn out, that I am not guilty, then a greater injury has been done the state than if she had put herself down upon the side of law and justice and mercy and humanity. So it becomes important, gentlemen, to the state of which we are citizens, that a just verdict be rendered in this case. Such a verdict as will do no injury to the state, no harm to the accused, no violence to the oaths you have taken to render a just verdict and such a verdict as will not in future years bring remorse of conscience to your souls.

There is but one thing to do in order to determine what that verdict shall be, and that is to determine the question of my guilt or innocence. So far as the merits of this individual controversy are concerned, it does not matter whether one thousand mountaineers or ten thousand were brought to Frankfort by me before the killing of Mr. Goebel, because no man who came with that mountain crowd has been indicted for firing the fatal shot. So far as the merits of this individual controversy are concerned, it does not matter whether Taylor called out the militia before or after the shooting of Senator Goebel. I was not a military officer, gentlemen. I had nothing to do with the militia. No connection has been shown between me and the militia. So all these things do not matter. The question is, the thing with which I am charged is, did I procure some one to shoot and murder Senator Goebel and was he killed in pursuance of that counsel and advice, if I did so counsel and advise?

That is the question in this case, men, and in the determination of that question there are certain well-defined roads we must travel, two beacon-lights by which our heads and hands and hearts are to be guided in our deliberations; and that is the law that has been given to you by this Honorable Court and the testimony you have heard from the mouths of the witnesses. That is it, men, those are the two things: the law and the testimony.

This is a peculiar case in some respects. Under ordinary circumstances and under ordinary conditions the juries of the country are left to decide what weight and what credence they are willing to give to the testimony of any witness or any number of witnesses; but that is not true in this case. Human wisdom and human experience have been such that when men are charged with conspiracy to murder their fellow men, those men can not be relied upon to tell the truth when they are testifying against another alleged co-conspirator for their own liberty. The Court tells you in one of his instructions, I believe number eight, that one alleged conspirator can not corroborate another alleged conspirator; that you can not believe all the alleged conspirators unless their testimony is corroborated by other testimony material to the issue. If the county of Bourbon was filled to standing-room with men all swearing until they were black in the face to any particular fact, if they were alleged co-conspirators, this Court tells you that you can not believe them all unless their testimony is corroborated by other testimony material to the issues. If the blackest convict in the penitentiary at Frankfort should come here wearing the badges of infamy around his person, the law tells you and the Court tells you that his testimony would be entitled to more weight and more credence than the testimony of a million Cultons, a million Goldens, a million Cecils, and a million Youtseys. Why? Because the law would not challenge the negro's testimony. It would not require the negro's testimony to be corroborated before it could be believed; but the law does challenge the testimony of Culton, Golden, Cecil, Youtsey and Company, and says that it must be corroborated before it can be believed.

Another thing in regard to these instructions. We have

heard a great deal said by Colonel Hendrick about a reasonable doubt, believing things beyond a reasonable doubt, before you could convict the defendant in this case. If you were to rely upon the words of Colonel Hendrick, the words “reasonable doubt” are a mere empty phrase. It does not mean anything, and does not signify anything. This Honorable Court has a different conception of that phrase, “beyond a reasonable doubt.” I will not take up your time to read these instructions—that was done by Judge Morton—but I desire to say to you that in every instruction upon which a verdict of guilty can be asked you will be compelled to believe in the guilt of the accused beyond a reasonable doubt. This court has gone further than that. It feared that you might overlook that important language in these instructions, and it has embodied it in separate, distinct and independent instructions, and said to you that you can not find the defendant guilty unless you believe beyond a reasonable doubt, from the testimony, that he is guilty of that with which he is charged. What does that phrase “beyond a reasonable doubt” mean, gentlemen? It must mean something; else, the Court would not have used it. And I desire to say to you that there is a great distinction between the trial of civil and criminal cases in this particular. If this had been a civil case, the Court would have told you that the verdict ought to go to whichever side has the greater weight of testimony to sustain it. Our law-makers in their wisdom have said this. Jurors in all civil cases have hung up before their eyes the scales of justice, as it were, and are required to render a decision for whichever side has the greater weight and value of testimony to sustain it. If it is for the plaintiff, find for the plaintiff. If it is for the defendant, find for the defendant. But that is not the law in the trial of criminal cases. Human liberty and human life are worth more than mere dollars and cents. It is so precious and so sacred in the eyes of the law, before you, in the capacity of jurors in this case, can lay violent hands upon my liberty, you must believe from the testimony, beyond all doubt, founded upon reason, that I am guilty of that with which I am charged. Greenleaf, the great writer on this branch of the law, has defined the phrase “beyond a reasonable doubt.” He says it

means this: "That in all cases of circumstantial testimony, the facts introduced upon the side of the prosecution must be such that there can be no escape from the conclusion that the defendant is guilty. In other words, the crime with which the defendant is charged could not have been committed at the hands of another or by the procurement of another." That is the law in this case. I will give Mr. Franklin the opportunity and the privilege to read to you from any law book known to civilized man, to confute or contradict the position I have here taken. Applying that law to this case, there is not a possibility of you, gentlemen, rendering a verdict of guilty. For is it not possible that Youtsey fired the fatal shot on his own volition? Is not that possible? Is it not possible that there could have been a conspiracy without my being a member of it? Is it not possible that Butler and Miller and Jim Frank Taylor and E. U. Fordyce and Ed Mentz and Walter Day and George W. Long, told the truth, when they told you that my mission to Louisville on the thirtieth of January was for a legitimate and honorable purpose? If any of these positions can be true, there is no possibility of there being found, in this case, a verdict of guilty.

Now, gentlemen, having briefly stated the law governing this case, I desire to take up the testimony and see what it proves and what it disproves. Before there can be a contention between any set of individuals upon any sort of proposition, there must be some common ground upon which to stand, something upon which the two contending parties agree. The prosecution upon the one hand and the defendant upon the other, in this case, agree, that Senator Goebel came to a shameful death and that those responsible for his taking-off should be severely dealt with. We agree, further, that assassination is the most cowardly and blackest of crimes known in the catalogue of offenses.

Every honest impulse of the human heart revolts and rebels against it. We agree further, I presume, that the killing of Goebel was the worst possible thing that could have befallen the Republican party in this state, and whether we agree on this proposition or not, you, gentlemen, know that it is nevertheless true. Then the things upon which we agree are,

that Senator Goebel came to a shameful death; that those responsible for his taking-off should be punished; and that his killing was the worst thing that could have befallen the Republican party in this state.

We differ as to who is responsible for his death. The prosecution claims that Senator Goebel came to his death as the result of a huge Republican conspiracy of which, it says, I was a member. And in support of their contention they introduce a large mass of testimony which may, for the convenience of discussion, be divided into five main divisions:

It says, first, that the bringing of the mountain crowd to Frankfort, five days before Senator Goebel came to his death, constituted a part of the conspiracy to murder him.

It says, second, that it was the plan of those implicated in the conspiracy to have the fatal shot fired from the office of the secretary of state, and that it was fired from there.

It says, third, that I absented myself from that office on the thirtieth of January, 1900, for two reasons: first, to give the assassin an opportunity to use that office, and for the further reason, as it alleges, to try to take suspicion of the crime from myself.

It says, fourth, that the militia was to be used for the purpose of protecting those alleged to be implicated in the killing from arrest or from violence, and that it was so used.

And it introduces, fifth, a large mass of threats and statements on the part of divers individuals, Culton, Golden, Youtsey and others, to try to bolster up their claim and theory of a conspiracy. I think I have stated with accuracy and with fairness the claims of the prosecution in this case.

The defendant, upon the other hand, denies these various allegations on the part of the prosecution and says first, that Senator Goebel did not come to his death as the result of a huge Republican conspiracy, or of any conspiracy, of which I was a member.

The defense says, second, that the bringing of the mountain crowd to Frankfort, five days before Senator Goebel came to his death, did not constitute a part of the conspiracy to kill Senator Goebel; as alleged by the prosecution; but that they came to Frankfort upon a legitimate and peaceful mission; to

petition the Legislature and remonstrate against those in power from overthrowing the will of the people as expressed at the polls.

The defense says, third, that if the fatal shot was fired from the office of the secretary of state it is the very best proof that I am not implicated in it; because nobody but a fool would agree for a murderous shot to be fired from the windows of his office, or his home, if he were connected with it.

The defense says, fourth, that I did not absent myself from the office on the thirtieth of January, 1900, for the purpose either of letting my office be used for assassination, or of trying to cover up my alleged connection with it; but that my trip to Louisville on that day was for a peaceful and legitimate mission, of trying to bring to Frankfort, mostly from Western Kentucky, another crowd of men to petition the Legislature.

The defense says, fifth, that the militia was not used, as alleged by the prosecution in this case, to protect the assassins from arrest, but that it was used for the purpose of protecting the occupants of the Executive Building and the attachés of the various offices from mob violence. The defense further says, that if the prosecution be right in their claims that the militia was used for the purpose of protecting the assassins, I should not be held chargeable with it, because I was not a military officer and I had nothing to do with the calling out of the militia. There has been absolutely no connection shown between me and the militia, one way or the other.

And the defense claims, sixth, as to these various threats and statements proven on the part of the prosecution, that they have been proven by men like Golden, Culton, Cecil and Youtsey, who are under indictment in this case and swearing for immunity, or they are sworn to by such men as Broughton, Huber, Smith and Company, who are swearing for money. Those are the claims of the prosecution and the defense in this case. Somebody must be right; somebody must be wrong. The claims of both sides can not be right because the two claims are antagonistic, one to the other, and the existence of the one set of claims negatives the existence of the other set.

(Court here took a few minutes for recreation.)

When the Court kindly gave me a little rest, gentlemen, I

was just saying that the claims on the part of the prosecution and those on the part of the defense could not possibly both be true. Now, I desire to take up the first claim on the part of the prosecution, namely, that Senator Goebel came to his death as the result of a huge Republican conspiracy, of which they say I was a member. That assertion on the part of the prosecution, like every other charge they make, is either true or false. If they are correct, that Senator Goebel came to his death as the result of a huge Republican conspiracy of which I was a member, I see no escape for you, gentlemen, but to bring in a verdict of guilty. If, upon the other hand, they are mistaken in that charge, you, gentlemen, can not do anything but bring in a verdict of not guilty.

Senator Goebel, from the evidence, came to his death in one or the other of three ways. First, he came to his death as the result of a misadventure which I will not discuss; or he came to his death at the hands of some one acting on his own volition; or he came to his death as the result of a conspiracy. If he came to his death at the hands of some one acting on his own volition, I could not be guilty. I was seventy-five miles away from the scene of the tragedy at the time of its commission and could not have fired the fatal shot. He either came to his death in one or the other of the two ways that I have stated, and in either case I could not be guilty; or he came to his death as the result of a conspiracy, and if he came to his death as the result of a conspiracy, I was either a member of that conspiracy or I was not a member of it. If he came to his death as the result of a conspiracy of which I was not a member, no one will contend that I am guilty.

Let us address ourselves to the first contention of the prosecution. In order to make any particular individuals responsible for the death of Senator Goebel, they must have met somewhere and formed some sort of plan to bring about the death of Senator Goebel; and he must have been killed in pursuance of that particular plan. Otherwise, no guilt attaches so far as the death is concerned. Two things are necessary. There must have been a conspiracy to kill Senator Goebel by, at least, two individuals, and he must

have met his death in pursuance of that particular conspiracy formed by them. Then, if the prosecution knew who killed Senator Goebel at the time this indictment was returned against me, it was the duty, under the law, of the Commonwealth's attorney, Mr. Franklin, to name those men in the indictment.

Either there was, or there was not, a conspiracy. If there was, it must have been formed at some place, and some one must have been in it. It could not have sprung into existence without human aid. Stones and trees do not enter into conspiracies to murder human beings. The Court says, in his instructions: "A criminal conspiracy is a corrupt combination of two or more persons by concerted action to do an unlawful act or to do a lawful act by unlawful means." Then before there can be a conspiracy there must be a corrupt combination of two or more persons. For there to have been a conspiracy to bring about the death of Senator Goebel, two or more persons must have met at some place and entered into an agreement looking to that end; that is, in order to have been an agreement there must have been some talk on the subject and the men must have met together. Then we arrive at the conclusion that the men who conspired to take the life of Senator Goebel, if there was a conspiracy, must have met at a place for that purpose or had some communication. That is a plain proposition, gentlemen. The prosecution can not dispute it. Let us see who the prosecution says were the ones who entered into the alleged conspiracy.

Let us see. A while after Senator Goebel was killed, on the thirtieth of January, 1900, it was either claimed by the prosecution, or its friends, that this alleged conspiracy that resulted in the death of Senator Goebel had within its scope most of the leaders of the Republican party of the state. You know, gentlemen, that charges of that character were made. The prosecution has formally charged some twenty men with being in the conspiracy to bring about the death of Senator Goebel. Now, let us look and see whom the prosecution has been mistaken about in their claims and in their charges.

To begin with, old man Holland Whittaker was arrested a few minutes after Senator Goebel was killed, charged with having fired the shot. He was carried to the Franklin County

jail, surrounded by a mob that begged for the poor man's life, and wanted to take it without trial by either judge or jury.

Following Holland Whittaker's arrest, the next man charged with having taken part in the murder of Senator Goebel was Silas Jones, a witness here for the prosecution. You remember that Jones was arrested on the ninth day of February in the city of Frankfort, by Detective Armstrong and others; carried down to the police headquarters and there told that he either killed Senator Goebel himself, or knew who did it, and if he did not tell they would call the mob. Silas Jones did not know and could not tell, and he was lodged in the jail at Frankfort.

Following his arrest came the arrest of a Mr. Sutton, sheriff of Whitley County. The papers teemed with damning testimony against him. They said it was certain that he was implicated and he was carried from one jail to another of this state in shackles and chains, branded as a felon.

Following his arrest came the arrest of Mr. Hazelipp, who was an officer at the asylum at Lakeland. He was carried in chains up to Frankfort. Following that, on the ninth of March, warrants of arrest were issued for my brother, Charles Finley, William Culton, Captain John Davis and myself, charging us with the crime of bringing about the death of Senator Goebel.

Following that came the arrest of Henry E. Youtsey, on the twenty-seventh of March, 1900. These were the only arrests that were made before people were formally accused by indictment.

At the April term of the Franklin court, 1900, indictments were returned against five men who, the prosecution charged, were principals in this murder, namely, Holland Whittaker, Jim Howard, Berry Howard, "Tallow Dick" Combs, and Henry E. Youtsey. They said in the indictment, which has been read to you, that there were a number of other people connected with the five named as principals, who were unknown to the grand jury and unknown to the prosecution. At the same time indictments were returned against several people, charging them with being accessories before the fact to the murder of William Goebel. They indicted at that time Taylor,

Finley, myself, my brother, Captain John Davis, Green Golden, Wharton Golden and Bill Culton, charging us with being accessories before the fact. Following these indictments, the next man charged by the prosecution as being implicated in the murder of William Goebel, was his Honor, Robert Noakes, Esq. Robert Noakes was arrested over in Virginia a few days before I had my first trial in this court-house in July and August, 1900. He was brought down to Frankfort, stayed in jail a day or two, was brought over here and testified in my case, and after doing that, he was never indicted. Following that, the next man charged with the murder of Mr. Goebel was Captain Garnett D. Ripley. He was indicted at the January term of the Frankfort circuit court, 1901, a year after Senator Goebel had been killed. It took the prosecution a whole year to make up its mind and come to the conclusion that Captain Garnett D. Ripley was guilty of the murder of Senator Goebel. They arrested him down in Henry County, carried him up to Frankfort, and lodged him behind prison bars.

The next men charged by the prosecution with being implicated in the murder of Senator Goebel were Cecil, the witness, and Zack Steele. These men were not indicted until the January term of the Franklin circuit court, 1902, two years after Senator Goebel had been killed. I believe these are all the men that have been formally charged by the prosecution with being implicated in the murder of Senator Goebel.

Now, let us see who it is that the prosecution has confessed by its own conduct to be not guilty of that with which they were charged.

Silas Jones was arrested, but never indicted. Noakes was arrested, but never indicted. Sutton was arrested, but never indicted. Hazelipp was arrested, but never indicted. That makes four men whom the prosecution has certainly confessed by their conduct to be not guilty, else they would have indicted them and tried them. Four men from this twenty leaves sixteen men who, the prosecution at one time or another was so thoroughly convinced, were guilty men, that they actually had them indicted by that convenient body, the grand jury of Franklin County. Of the sixteen men, whom the prosecution

has formally indicted, let us see whom they have confessed by their own conduct to be not guilty of the murder of Senator Goebel.

They have confessed by their conduct that Captain Davis is not guilty of the murder of Senator Goebel, although he was indicted at the same term of court at which I was indicted, and although he was on the train with me when we were trying to get to the mountains of Kentucky. He was dressed in a military garb and he had a pardon in his pocket from W. S. Taylor for alleged complicity in the murder of Senator Goebel. These things, say the prosecution against me, are overwhelming and damning testimony of my guilt. They are not so in the case of Captain Davis. He is not guilty. The prosecution has confessed that by its conduct, because in August, 1900, Captain Davis was given bond and sent to his home and told by the prosecution if they ever needed him they would send for him. They do not now say that Captain Davis had anything to do with the murder of Senator Goebel. You have not heard anything of that character in this case. So when they charged in this indictment that Captain John Davis and I conspired together in bringing about the death of Mr. Goebel, that charge in your indictment, Mr. Franklin, is wrong, according to your own confession.

Let us see whom else. They charged Green Golden with being implicated with me in the murder of Senator Goebel; they said that Green Golden and myself entered into a conspiracy to bring about the death of Senator Goebel. Green Golden was not arrested for a long time. He was finally arrested and brought to Frankfort and lodged in jail, and after many months of weary waiting, was at last discharged on bond and sent home. The prosecution has never tried him. They never got ready to try him. They never expect to try him. And when they charge in this indictment that I conspired with Green Golden to bring about the death of Mr. Goebel, that charge, they now confess by their conduct, is wrong.

Let us see whom else. They charge in this indictment that I conspired with Wharton Golden and W. H. Culton to bring about the death of Senator Goebel. Golden and Culton are

two of the leading star-witnesses for the prosecution. Golden says he heard a great deal of rash talk. He says that he heard me use a great many expressions of violence, but as far as he is individually concerned, he did not know anything about Senator Goebel going to be killed on the thirtieth of January. He said the only way he expected Senator Goebel to be killed was in a fight in the legislative hall. So, if Golden's word can be relied upon, Golden certainly did not know anything about the alleged plan of killing Senator Goebel, and, therefore, the conclusion is that I could not have been in any conspiracy with Golden, if I were in one at all. And there is another fact which leads me to believe that the prosecution does not believe that Golden was in a conspiracy to murder Senator Goebel. You remember he told you that he was over in Cincinnati selling hardware in the store of Mr. Arthur Goebel. I do not for a minute believe that, if Arthur Goebel believed Golden was guilty of complicity in the murder of his brother, Mr. Goebel would have the remotest connection with Wharton Golden, one way or the other. I am confident he would not do it. And there is another thing about Culton which leads me to believe that the prosecution does not believe him to be guilty. I am not passing on the guilt or innocence of Culton. I have nothing to do with that. Culton says he is not guilty. He is a witness for the prosecution and he says he heard a great many threats and statements and heard a great deal of wild talk, and that he was the man chosen to go up in the House of Representatives and raise a fight and kill off enough Democrats to make a Republican majority and all that, but he further tells you that he was the worst surprised man in the whole city of Frankfort when he heard of Senator Goebel's being shot. He further tells you that he never did advise with me in his life concerning the death of Senator Goebel, that he never heard me use an expression about it one way or the other. He says he heard me use wild talk, but not about killing Senator Goebel. That is the testimony in this case and it will not be denied. And if the prosecution believe that Culton was a member of the conspiracy to kill Senator Goebel, I can not think that it would have him over at the Wellington Hotel, the best hotel in this

town, and be thrown in daily companionship with him. It is your duty, Mr. Franklin, to prosecute the guilty and not to associate with them in ideal fellowship and make out of them boon companions.

Culton says he is not swearing for immunity. Culton says he is not getting anything for his testimony. If Culton is not swearing for immunity, and is not getting anything for his testimony, the prosecution surely feels that he is not guilty, because if he is not swearing for immunity nor to get money, if he is guilty, the prosecution would certainly have brought him to trial. But you can put Golden and Culton down in whatever category you want to; they both say that they were not in any conspiracy with me to bring about the death of Mr. Goebel. Golden said he didn't know anything about Goebel's going to be killed from the office of the secretary of state, and that he had no knowledge of such a plan, and Culton tells you that he was the most surprised man in Frankfort when he heard it, and that he was never in any plot or plan to bring about the death of Mr. Goebel. Then, if the testimony of Golden and Culton can be relied upon, certainly I was not in any conspiracy with them to bring about the death of Mr. Goebel, because they say so, and they are star-witnesses for the prosecution. Therefore, when you charge in your indictment, Mr. Franklin, that I conspired with Golden and Culton to bring about the death of Mr. Goebel, that much more of your indictment must be wrong.

Let us see whom else. They charge in this indictment that I was in a conspiracy with Frank Cecil to bring about the death of Senator Goebel. They put Cecil upon the witness-stand and Cecil says that, so far as he is individually concerned, he had not the slightest idea that Senator Goebel was going to be killed, except the impression left upon his mind by the expression he says that he heard me make the night before Goebel was killed. He says, so far as he was concerned, he was in no plot or plan to kill Senator Goebel. He said he did not know anything about Mr. Goebel's going to be killed from the office of the secretary of state. He said when I told him on the night of the twenty-ninth of January that there was a man coming down to kill Goebel the next day, that he never

asked me who it was or anything about it. But I will get to that conversation later on. He said he never asked me anything about it; never inquired about it; didn't care anything about it. He says when I told him there was a man across the hall who wanted to kill Mr. Goebel a few days ago, and that I would not let him do it, that he did not inquire what the name of the man was; that he did not know anything about it and cared less. Then if Cecil can be relied upon, so far as Cecil is concerned, he and myself did not have anything to do with the murder of Mr. Goebel. Cecil said that he was an innocent man. Then when you charge me in this indictment with being in a conspiracy to bring about the death of Mr. Goebel, with Frank Cecil, if Cecil can be believed, that much more of your indictment is wrong.

Now, let us see whom else. They charge in this indictment that I was in a conspiracy with poor old Holland Whittaker to bring about the death of Senator Goebel. That is the charge in this indictment. Whittaker was turned loose on bond away back in August, 1900, and has been with his wife and children ever since, and the prosecution now says old man Whittaker had nothing to do with the killing of Mr. Goebel. Terms of court after terms of court have passed in this courthouse, and the case of Holland Whittaker has not been called for trial. The prosecution has never gotten ready to try old man Whittaker. Whittaker has never prepared for trial. They have given him bond and told him to go home, and, if their present theory is to be relied upon, old man Whittaker had nothing to do with the killing of Mr. Goebel. Therefore, the conclusion is inevitable that I could not have conspired with him to bring about the death of Mr. Goebel.

Let us see whom else. Captain Garnett D. Ripley has been indicted as being an accessory before the fact to the murder of Senator Goebel. They charge that he and I were implicated in the murder of Senator Goebel. As I said a few minutes ago, it took the prosecution a whole year to find out that Captain Garnett D. Ripley was guilty. They did not indict him until the January term of the Franklin circuit court, 1901. That was nearly a whole year after Senator Goebel had been killed, and nearly a whole year since they

had charged me with being implicated in the murder of Senator Goebel. In other words, the prosecution had a whole year to investigate the guilt of Captain Garnett D. Ripley and after a thorough investigation they came to the conclusion that he was guilty; and they arrested him down in Henry County and carried him up to the Franklin County jail, followed by his broken-hearted wife and terrified little daughter, and lodged him behind the bars. His trial came up in April of the same year and the jury in that case said, "We, the jury, agree and find the defendant not guilty," and they sent him home. Therefore, when they charged in this indictment, that I was in a conspiracy with Captain Garnett D. Ripley to bring about the death of Senator Goebel, that much more of their indictment must be wrong.

Let us see whom else. There was Berry Howard, with whom, they charged in this indictment, I conspired to bring about the death of Senator Goebel. Berry Howard was not arrested for quite a long time. He was finally arrested and lodged in jail in Frankfort. He was put on trial for his life, and, Mr. Franklin, before the jury, begged for his life. The jury acquitted Berry Howard and sent him home. Therefore, I could not have been in any conspiracy to kill Senator Goebel with Berry Howard, because the jury in that case said that he was innocent of the charge against him, and, therefore, when you charge us with joint complicity in the murder of Mr. Goebel, that much more of your indictment, Mr. Franklin, must be wrong.

Let us see whom else. Here is Dick Combs. They charged in this indictment that Dick Combs and myself were in a conspiracy to bring about the death of Senator Goebel. Dick Combs was finally lodged in jail at Frankfort. Away back in August, 1900, he was given bond and sent home by Mr. Franklin, and if their present theory can now be relied upon, Dick Combs had nothing to do with the murder of Senator Goebel. Youtsey told Mr. Arthur Goebel that it was Dick Combs that he was dealing with in trying to kill his brother. Upon that word of Youtsey, believing what he said, Mr. Goebel had Dick Combs arrested, but Youtsey says: "I was mistaken about that. Hockersmith was the man. I am re-

sponsible for Dick Combs' indictment and arrest. I told them it was Dick Combs but it turned out to be Hockersmith." So, when they charged in the indictment here that Dick Combs and myself were in a conspiracy to bring about the death of Senator Goebel, that much more of their indictment is wrong.

Now, let us see with whom the prosecution has confessed, by its conduct, that I was in no conspiracy. I was in no conspiracy with Silas Jones, none with Sutton, none with Noakes, none with Hazelipp; because they were never indicted. I was in none with Captain Davis, none with Berry Howard, none with Green Golden, none with Wharton Golden and Bill Culton, if they can be believed; none with Captain Garrett D. Ripley, none with Dick Combs. Then let us see whom I was in a conspiracy with, if I was in a conspiracy with anybody. Taking these men from the list, whom else do we have? They say that Taylor conspired with Jim Howard and Henry Youtsey, and these other men, to bring about the death of Senator Goebel. I am here to say to you that I do not know anything about that. Taylor may have done it and he may not have done it. I am not here to answer for the sins of Governor Taylor, if he has any sins. He can do that for himself. I don't know whom he conspired with, whether anybody, but, as far as I am individually concerned, I expect to show you that I did not conspire with anybody. They charge in this indictment here that I procured five men to shoot and murder Senator Goebel, and they said at that time that there were unknown men acting with these men, but that bugaboo of an unknown quantity has been cast into the mist. That bugaboo of an unknown man whom the country was taught to believe must have been some mountain man, who came down with that mountain crowd, has been cast away; because, if the prosecution can be relied upon, no man who came in that mountain crowd had aught to do with the firing of the shot that resulted in the death of Senator Goebel. None was present, aiding, or sheltering those who did fire it. But five men have been indicted as principals: Holland Whitaker, who lives in Butler County; "Tallow Dick" Combs, who had nothing to do with the mountain crowd and

did not come with it; Henry E. Youtsey, who lived up here in the northern part of this state in the county of Campbell, and who says he had nothing to do with the mountain crowd, and James Howard, who did not come with the mountain crowd, and had nothing to do with it, if the position of the prosecution can be relied upon; because they say that he came to Frankfort on the very day that Senator Goebel was killed, within less than an hour of the murder. The mountain crowd came five days before. But for a long time this country was taught to believe that the mountain crowd killed Senator Goebel, and that I brought the mountain crowd to Frankfort, and that, therefore, I am responsible for what the mountain crowd did; because they said that the unknown men in the indictment certainly embraced some of the mountain crowd. But that ghost of an unknown man, if the prosecution can be relied upon, has been taken out of the case; for, they now say there was no unknown man about it. They say now that the unknown man had nothing to do with it; that he was, and is, a mere will-o'-the-wisp, without either a local habitation or a name. If they can be relied upon, it was Jim Howard and Henry Youtsey, who fired the fatal shot that resulted in the death of Senator Goebel, and nobody else was about, or had anything to do with it, because Youtsey says he said to Howard: "Do you want to see the governor," and Howard said to Youtsey: "I don't want to see anybody," and Youtsey says there was nobody in the hallway, and Youtsey said to Howard: "If you see anybody coming, step under the stairway." Then nobody was in or about the office of the secretary of state, or the hallway, and nobody had anything to do with the killing of Mr. Goebel except Jim Howard and Youtsey, if the position of the prosecution can now be relied upon, and, therefore, all this bugaboo about the mountain crowd, or any of them killing Senator Goebel, vanishes into vapor. Therefore, none of this conduct on the part of the mountain crowd, none of this wild speech on the part of the mountain crowd, resulted in the death of Senator Goebel; because no man who came with that mountain crowd has ever been accused by the prosecution of firing the fatal shot, or being present, aiding and abetting those who did fire

it. Another distinct and independent set of men have been indicted as heretofore referred to, and all this abuse of the mountaineers, about their wearing cottonade pants and buckeye hats, and all this alleged shooting and all this alleged threatening speech on their part, have been dragged into this case for a purpose, and that purpose is to prejudice you against me; because I did bring the mountain crowd to Frankfort, and I will take up later and explain to you, gentlemen, my motives for bringing that mountain crowd. But if the prosecution can now be relied upon, no member of that mountain crowd fired the fatal shot, or was present aiding or abetting those who did fire the fatal shot that resulted in the death of Senator Goebel; therefore, if they constituted a part of the alleged conspiracy to murder Mr. Goebel, as is maintained by the prosecution, that conspiracy resulted in nothing, because a different set of men, living in other portions of the state, have been indicted, charged with firing the fatal shot.

But I am wandering just a bit. I say they have charged me with procuring Holland Whittaker, Dick Combs, Henry E. Youtsey, Berry Howard and Jim Howard to fire the shot that resulted in the death of Senator Goebel, none of whom came with the mountain crowd. That is what they charge me with. If I did procure those men to shoot Senator Goebel, I am guilty. If I did not procure those men to kill Senator Goebel, then I am not guilty, *although* the mountain crowd came to Frankfort, and *although* the militia was called out, and *although* there was a great deal of excited speech and a great deal of reckless talk done at Frankfort, during those stormy times. I say if I procured Jim Howard, Henry Youtsey, Dick Combs, Holland Whittaker or Berry Howard to shoot or kill Senator Goebel, then I am guilty, whether the mountain crowd came to Frankfort or not; but if I did not procure Jim Howard, Henry Youtsey, Dick Combs or Holland Whittaker or Berry Howard to shoot or kill Senator Goebel, then I could not be guilty, *although* the mountain crowd *did* come to Frankfort, and *although* the militia *was* called out. I think that is clear.

Now, let us see: Did I procure Dick Combs to shoot and murder Mr. Goebel? What is the testimony in this case?

Dr. Prewitt told you that Dick Combs was in the adjutant general's office when the fatal shot was fired. The testimony in this case is, that I never laid eyes on Dick Combs until after Dick Combs was arrested and lodged in the Franklin County jail, charged with this crime, the same as myself. The testimony is that I never saw Dick Combs, had no communication with him, had nothing to do with him, and did not know him until after he was lodged in jail, after I had been lodged in jail. Therefore, the conclusion is inevitable that I did not conspire with, aid, counsel, advise or procure Dick Combs to shoot and murder Senator Goebel. There can be no doubt about that, and when they charge in this indictment that I procured Dick Combs to shoot and murder Senator Goebel, you know, and the whole country knows, that that much more of their indictment is wrong; because I did not procure Dick Combs to shoot and murder Senator Goebel, if the testimony for the prosecution in this case can be relied upon.

Now, let us see whom else: They charge in this indictment that I procured old man Holland Whittaker to shoot and murder Senator Goebel. That is charged in this indictment, but the testimony is, that I never saw old man Holland Whittaker until after he was arrested and I was arrested, and until we were carried to the Louisville jail for safe-keeping after Senator Goebel had been shot. That is the testimony in this case. There is nothing in the whole record to contradict it. So if the testimony can be relied upon, I certainly did not procure Holland Whittaker to shoot and murder Senator Goebel. And besides that, the prosecution now says that Holland Whittaker had nothing to do with the killing of Goebel.

Then they charge me in this indictment with procuring old man Berry Howard to murder Senator Goebel. That is what they charge me with and that is what you, gentlemen, are trying me for. That is the thing upon which you are asked to take from me my life by these able gentlemen in their excited arguments. What is the testimony in this case? The testimony in this case is, that I had scarcely met Berry Howard before Senator Goebel was killed; that I had had no communication with him; that I had had no conference with him; that I did not procure him to do anything, and besides

that, Berry Howard has been acquitted of the charge of having fired the shot, or of being present, aiding, or abetting those who did fire the fatal shot that resulted in the death of Senator Goebel. Then three out of the five named persons I could not be guilty with. I was not guilty with "Tallow Dick" Combs. I did not know "Tallow Dick" Combs, and "Tallow Dick" Combs has been turned loose and has had his liberty for nearly three years. I could not be guilty with old man Holland Whittaker, I did not know him, and he has been given his liberty for nearly three years. I could not have been guilty with Berry Howard, because Berry Howard has been acquitted by a jury of his country. Then if I am guilty at all, I must be guilty in procuring either Jim Howard or Henry E. Youtsey to shoot and murder Senator Goebel. I couldn't be guilty with these other men. Then, I repeat, if I am guilty at all, I must be guilty of procuring either Jim Howard or Henry E. Youtsey to fire the fatal shot that resulted in the death of Senator Goebel. There can be no escape from that.

Now, did I procure Jim Howard to fire the fatal shot that resulted in the death of Senator Goebel? These men in their arguments here stated that Jim Howard was the man behind the gun; that Jim Howard was the man who pulled the trigger and fired the fatal shot. Did I procure Jim Howard to fire the shot that resulted in the death of Senator Goebel? If I did, I am guilty. If I did not, then as far as Jim Howard is concerned, I am not guilty.

What is the testimony in this case? Think over it. We have gone through this trial for some four weeks. Think over the testimony that has been introduced on the witness-stand in this case and point to a single witness on the part of the prosecution or the defense that said I ever even knew Jim Howard at the time Senator Goebel was shot on the thirtieth of January, or prior thereto. If you will show me a witness in the whole case who has sworn from this witness-stand that I even knew Jim Howard, I will agree right now that you, gentlemen, shall bring in a verdict of guilty. Show it, and bring in your verdict. There is not a man in all the record of this case, from the first witness to the last, who

has testified that I even knew Jim Howard on the thirtieth of January, 1900. Point it out, Mr. Franklin, and then ask a verdict of guilty at the hands of the jury; point it out, and I will agree that you find me guilty. If the testimony in this case can be relied upon, I did not know Jim Howard at the time Senator Goebel was killed. If the testimony in this case can be believed, I never had any communication with Jim Howard before Senator Goebel was killed. Howard tells you from the witness-stand in this case that he did not know me at the time Senator Goebel was killed, and never met me until after we had both been transferred to Louisville, after our first trials, for safe-keeping. I testified to that fact myself, and since Colonel Campbell has said that I am one of the ablest of the star-witnesses on the part of the prosecution, certainly I have a right to refer to my own testimony. Mr. Howard says he never saw me until he met me at Louisville after he had been convicted and after I had had a trial. I testified to the same thing, and there is no conflicting proof. There is not a syllable of proof on the part of the prosecution to show anything to the contrary. Then, so far as Jim Howard is concerned, I certainly did not conspire with Jim Howard to bring about the death of Senator Goebel, if the testimony in this case can be believed or relied upon. Is not that true? The only testimony in the whole of this record which would tend to show, even by indirection, that I had anything to do with Jim Howard, is the testimony of Frank Cecil. He says he had a talk with me on the twenty-ninth of January in my office; that he casually dropped into my office on that night and that I said to him that a man was coming to Frankfort tomorrow to kill Senator Goebel. Frank Cecil was asked if he knew that Jim Howard was going to be in Frankfort, and he said he did not. So, taking Cecil's statement for it, I did not know Howard was going to be in Frankfort. I did not know anything about Jim Howard's going to fire the shot that killed Senator Goebel. Even Youtsey says that as far as he knew, I did not know Jim Howard, and I had had no connection with Jim Howard. Youtsey's testimony is that I agreed to be out of my office. He doesn't say that I agreed to be out of my office for the purpose of Jim Howard's killing

Goebel. He doesn't say that I had any knowledge that Taylor had written to Jim Howard, and that Jim Howard was going to be in Frankfort. Youtsey never said anything about that. Then if the testimony of the prosecution can be believed, if the testimony in this case is going to have any credence, I did not know Jim Howard; I had no communication with Jim Howard until after Senator Goebel had been killed. Then, gentlemen, I could not be guilty, so far as the proof in this case is concerned, of conspiring with Jim Howard to bring about the death of Senator Goebel, because the testimony is that I did not know him; the testimony is that I had no communication with him, and had nothing to do with him. Cecil said that he did not know that Jim Howard was going to be in Frankfort on the day that Senator Goebel was going to be killed.

You can not go outside of the record and say "there is no testimony showing Powers knew Jim Howard; there is no testimony showing he had any communication with Jim Howard, but we believe that he did." Oh, no, men, you can not do that! You have sworn that you would not do that. You have sworn that you would try this case according to the law and the testimony. You have sworn that you would not supply any of the testimony either for the Commonwealth or for the defense. Then you can not say, "It is more than likely true that you did know Jim Howard and we are going to believe it anyway." You can not do that, and you are not going to do that. If you are going to do that, this trial is a farce; if you are going to do that, there was no necessity for introducing any testimony in this case. If you are going to supply the testimony for the prosecution, let us do away with the formalities of a trial and let you settle it all. Read the indictment and find me guilty. You have sworn that you would try this case from the law and from the testimony.

All that Cecil's testimony could mean, if it be true, is that I had knowledge that Senator Goebel was going to be killed. I say, if true. So if every sentence and syllable he uttered is absolutely true it could not mean any more than that I had knowledge that Mr. Goebel was to be killed, and that is not enough. The court has not told you in these instructions that

if I had knowledge that Mr. Goebel was to be killed you should find me guilty. No! That has never been the law in this country. Mere knowledge that a man is going to be killed does not connect the man who has the knowledge. The Court has not said, if I had knowledge of the matter, you should find me guilty; but on the contrary, he says if I advised, counseled or procured some one to shoot Senator Goebel, in that event I am guilty. Suppose you should be down here on the streets of Georgetown and a man should pass you hastily and say to you, "I propose to shoot to death that man down on the street corner," and he goes and shoots him to death. You were down there and you heard what he said and you knew he was going to do it, you had knowledge of it; but would anybody contend that you were guilty, simply because you had knowledge that the man was going to be shot down in the streets of Georgetown? No. That would make all eye-witnesses to the crime participants in it. Isn't that true? That has never been the law in this country—it never will be. And, taking everything that Cecil has said as true, it does not show any connection between Jim Howard and myself. But let me repeat again that Cecil's story is a base fabrication, sworn to for immunity.

Then, if the testimony can be relied upon, I was in no conspiracy with Jim Howard to bring about the death of Senator Goebel. If every word that Cecil testified to be true,—and it is not true, and may the God in heaven strike me dead this minute if I said to him: "There is a man coming to-morrow to kill Goebel," or that I tried to get him to kill Mr. Goebel,—but supposing every word that Cecil testified to was true, it makes no connection between me and the assassination of Mr. Goebel, or me and James B. Howard. Cecil said he did not know Howard was coming to Frankfort, and that all I said to him about the matter was that there was a man coming to-morrow and if he comes he will certainly kill Goebel. Cecil said that I had my murderous talk with him when I was alone; that he was very much terrified when, he says, I expressed to him a desire for blood; that his whole nature rebelled against it and revolted at it. He said that I must have realized that I had made a mistake

in approaching him on such a subject; for, he says, I said to him to never mention what I had said to him; although he has me, within the next five or ten minutes, getting another man to approach him on the same subject and asking him what he (Cecil) "thought about what Powers had said to him," and offering him two thousand five hundred dollars to kill Mr. Goebel. He says that this occurred in ten minutes after I had told him that there was a man coming to Frankfort to-morrow to kill Goebel. If there was a man coming to Frankfort on the following day to kill Goebel, why should I have Cecil offered two thousand five hundred dollars for doing the work? Answer me that, gentlemen. And if Cecil and others would waylay and rob a man of two thousand one hundred dollars, don't you believe that he would kill a man for two thousand five hundred dollars, if it had been offered him? If he would detain a woman against her will for the purpose of having carnal knowledge with her, what crime would he not commit? As God is my judge, I never said to Cecil what he says I did. May God in heaven paralyze my speech, if such be true. The law says that a man who is base enough to enter into a conspiracy to murder his fellow man is infamous enough to swear himself out if he can, by swearing others in. The law says that you can not believe what he says unless his testimony is corroborated. Cecil's testimony is not corroborated, but it is contradicted. If I had wanted to have testified falsely, I would have denied Cecil's being at my office at all that night. I knew that it was beyond the power of the prosecution to contradict me in that, except by Cecil's own testimony. But if all that Cecil testified to be true, which it is not, it does not even remotely connect Jim Howard and myself with the murder of Mr. Goebel.

Then four of the five men named as principals, that you, Mr. Franklin, charge me with procuring to shoot and murder Senator Goebel, if the testimony can be relied upon, I certainly did not procure. I did not know Dick Combs; I did not know Holland Whittaker; I did not know Jim Howard; and Berry Howard has been acquitted. Then four of the five men that I am charged in this indictment with procuring to shoot and murder Senator Goebel, I did not know and had

no connection with, if the testimony of the prosecution can be relied upon or be believed. I am not guilty with any unknown man, because they have eliminated the unknown man from this case. The unknown man has nothing to do with it. Then if I am guilty at all of procuring anybody to shoot and murder Mr. Goebel, I must be guilty of procuring Henry E. Youtsey to shoot and murder him. I am not guilty as to the other four named principals in this case. I am guilty with no unknown man, because there is no unknown man, and if I am guilty at all, I must be guilty of procuring Henry E. Youtsey to shoot Senator Goebel. Is not that true, men?

Now, am I guilty with Henry E. Youtsey? As I said a moment ago, if I am guilty of procuring anybody to murder Senator Goebel it must be Henry E. Youtsey, and what does the testimony show as to that particular man? We must rely upon the testimony, and what is the testimony in this case? The testimony, both upon the side of the prosecution and upon the side of the defense, is that I never met Henry E. Youtsey until the first day of January, 1900, just thirty days before Senator Goebel was shot and killed. If the testimony for the prosecution in this case can be relied upon, Youtsey never spoke to me or to my brother relative to the shooting of Senator Goebel until the twenty-ninth day of January, one day before Senator Goebel came to his death. That is the testimony. You, gentlemen, no doubt have met with men with whom you have had an intimate acquaintance. You, no doubt, have met men whom you could trust. You, no doubt, have met men you would not trust, but I want to ask you if you ever met a man in all your life and within thirty days afterward, without knowing anything further of him (and that is the testimony in this case as far as Youtsey and myself are concerned) without having any intimate relationship with him—I want to ask you if you ever took such a man into your bosom and revealed to him the secrets of your heart? Did you ever do it, Mr. Layson? I am sure you never did. Did you ever take a man whom you just happened to meet aside within thirty days afterward and reveal to him your plans for money-making, and the property you expected to acquire, and the marital relationships that you desired to see your sons

and daughters enter into? Did you ever do it? I can say for you that you never did. Did you ever become a candidate for any office elective by the voters of a county, district or state? And if you ever did, did you ever take a casual voter aside and reveal to him the exact plans you expected to adopt to win the race, and how you would defeat your opponents, A, B and C, but that they would not know anything about it until they were defeated? Did you ever commit any crime in your life? If you ever did, I want to ask you if you ever took some unknown man into your bosom and asked him to go with you to help you commit that crime?

(Court here adjourned for the day. The next morning I continued my argument.)

Gentlemen: When the court adjourned last night we were discussing Youtsey, but I want to go back and say one word more with reference to Howard, before I take up the Youtsey end of it.

You will remember that Colonel Campbell, yesterday afternoon, asked the defense why it was that they did not call to the witness-stand and introduce Mr. Paynter and why they did not call and introduce J. B. Matthews. He said that those points of Cecil's testimony were corroborated by the fact that we had it in our power to produce these men, and that we failed to do it. Let us look at that a minute, gentlemen. Colonel Campbell has claimed that I am one of the chief star-witnesses for the prosecution. If I am, I certainly have not tried to shield myself, but I have told the whole truth. There can be no other inference drawn. Again, Cecil is one of the men whose testimony this honorable court has told you could not be believed unless corroborated by other testimony. The Court has not told you that you can not believe my testimony unless it is corroborated by other testimony. So, then, it was incumbent upon the prosecution to introduce Mr. Paynter on this witness-stand to corroborate the testimony of Cecil before it is worthy of belief, if the Court has given the proper instructions to his jury. You remember that, yesterday afternoon, Colonel Campbell said Mr. Paynter was one of the conspirators in this case, and said

in substance that if he ever got down in this neck of the woods, he would be called upon to stand trial for his alleged participation in this crime. How can you expect us to get witnesses here to testify in behalf of the defendant, when they are threatened with prosecution by the representatives of the Commonwealth, if they put in an appearance? These gentlemen well know that, as far as the defendant is concerned, he used his utmost power in trying to get Paynter to the witness-stand in this case. They well know that interrogatories were prepared for Mr. Paynter to be sent to the state of Kansas, and that, after he was found to be in Kentucky, a subpoena was issued for Mr. Paynter to appear on the witness-stand and testify for the defense. We failed to get him, but we are not responsible for it and not to blame, and even if we had got him here we could not have contradicted Cecil in the damaging part of his alleged conversation with me, if Cecil can be believed, because Cecil said that Paynter was not present at that time and that I never, in Paynter's presence, said anything about killing Goebel or doing other violence; that all he knew about Paynter was that Paynter was in my office on the night of the twenty-ninth, when Cecil says he came there.

And they say to us, "Why didn't you call J. B. Matthews?" Cecil says he had a talk with J. B. Matthews after he left your office and had the talk with you. They say, why don't you call J. B. Matthews? They assert that he is my confidential man, my detective. If Mr. J. B. Matthews can be believed he was also the detective for the prosecution in this case. If Mr. Franklin can be relied upon he was also a detective for the prosecution in this case, for don't you remember that Mr. Franklin put to R. N. Miller the question: "Did you not say to J. B. Matthews up at Indianapolis some time ago that you had a talk with W. H. Culton and that he said that J. L. Powers seemed to be intimate with Henry Youtsey?" You remember that question and you remember that Mr. Franklin was holding in his hand a large volume of written statements that must have been prepared by J. B. Matthews. Miller says he did not say it; but, judging from all appearances and the testimony in the case, J. B. Matthews must have been

the confidential man and the detective for the prosecution. Again, as I say, why the necessity of the defense calling J. B. Matthews, so far as the Cecil end of it is concerned? The law says you can not believe anything Cecil says, unless the testimony is corroborated by others. That is the law, and there is no doubt about that. Then if that be true, and it is true, why is it that the prosecution did not call Matthews to the witness-stand and show by him, if true, that he did on the Monday night before Goebel was killed have a conversation with Cecil in the reception-room between the private office of the secretary of state and the governor's office?

Now, let us continue the Youtsey end of it. I said to you last night that I was indicted and charged with procuring five men to shoot and murder Senator Goebel: Holland Whittaker, Dick Combs, Henry E. Youtsey, Jim Howard, Berry Howard. I showed you last night that I did not know Holland Whittaker. I showed you last night that I did not know Dick Combs, and that I did not know Jim Howard, and that Berry Howard had been acquitted. Then if I am guilty at all, I must have procured Henry E. Youtsey to shoot and kill Senator Goebel. I said to you further that the testimony in this case shows that I only knew Henry E. Youtsey about a month before Senator Goebel was killed. The testimony is that I was sworn in before him as a notary public, took the oath of office as secretary of state; that he was the only notary public in the building, and that I had a casual speaking acquaintance with him after that time until the twenty-seventh day of January, 1900. You know they charge that I was implicated in getting Youtsey to fire the shot from my office, and you know I asked you last night that if you wanted to kill some of your neighbors, if you wanted to stoop to the dastardly method of assassination in order to get rid of them, if "you would come down to some of these stores and pick up a clerk with whom you have come in contact since you have been on this jury and take him inside and ask him to go into a conspiracy with you and get him to shoot and murder your neighbor?" You remember I asked you this question: would you take that clerk out to your home and put him down by your parlor window, or by the side

of the window of your office, if you had an office in Georgetown, and instruct him to shoot the man as he passed by your door? Why, gentlemen, such conduct as that would be the act of an idiot, the deed of a lunatic. You would not do that; there is no question about that. Would I? If you wanted to have your neighbor assassinated, you certainly would not want it to be found out. Isn't that true? And if you had him shot from the windows of your office or home, would you not be publishing to the world the very thing that you most desired to keep secret? If you wanted your neighbor killed, your home would be the last place on earth that you would select as the place whence the fatal shot should be fired. You know that, and if you wanted your neighbor killed, the clerk in the store would be the last man on earth you would go to if you were hunting a man to commit murder. Is not that true? If you wanted your neighbor killed, would not you go to some man you had seen trusted and tried, some man with whom you could risk your very life? And wouldn't your home or your office be the last place on earth from which you would have the fatal shot fired? Is not that true, men? And if I had wanted Senator Goebel killed, or had had any interest in the killing of Mr. Goebel, do you think I would go to an unknown man like Henry E. Youtsey, a man of whom I knew absolutely nothing—nothing of his family, nothing of his trustworthiness, nothing of him—and agree with him that he could fire the fatal shot from my office with three other men that I had not known up to that time, namely, Jim Howard, Holland Whittaker and Dick Combs, or any one of them? If I had wanted Senator Goebel killed, would not I have gone to some man who had stood by me in the past, some man I knew I could rely upon, some man I had seen trusted and tried? And if I wanted him killed, would not my office have been the last place on earth from which I would agree that the fatal shot should be fired? Would not I have known that I was advertising to the world the very thing that I would have desired to keep a secret? Apply common sense to this matter. The best sort of sense a man ever had is common sense. If Youtsey can be believed, if his testimony can be relied upon, he never spoke

to me about the killing of Senator Goebel until the twenty-ninth of January, 1900, one day before Senator Goebel came to his death. That is the testimony of Henry E. Youtsey. That is the testimony of the Commonwealth witnesses. I say, if the testimony of the Commonwealth can be relied upon, Henry Youtsey never spoke to myself or my brother concerning the death of Senator Goebel until the day before Senator Goebel was killed. If the testimony of Henry E. Youtsey can be relied upon, I did not know anything about his plans to kill Senator Goebel with Dr. Johnson, or with Hockersmith. I did not know anything about Youtsey's wanting to get into my office, or that he had a slick scheme to kill Goebel from my office, because Culton tells you he never did tell me anything about that. The testimony is, that Youtsey never told me anything about his murderous plots prior to January twenty-ninth. I did not know that he was trying to get three hundred dollars from Walter Day to kill Senator Goebel. There is no testimony in this record showing a thing of that character, and such a thing never did exist. Nothing, so far as proof in this case is concerned, reveals that I knew anything about Youtsey's wanting to get Mastin's gun, and about Youtsey's ordering cartridges from Cincinnati to kill Mr. Goebel with, and about his getting Hockersmith or Dr. Johnson in my office.

I knew nothing about Youtsey and Johnson, or Youtsey and Hockersmith, at any time, searching the Executive Building over to find a suitable place from which to fire the shot. I knew nothing about his and Johnson's plan for the man who did fire the fatal shot to run through the basement. I knew nothing about his dreaming that he saw some of the mountain men kill Goebel; nothing about his and Johnson's nitroglycerin scheme to kill Goebel in his room in the Capital Hotel; nothing about his saying to Captain Ricketts that his (Youtsey's) job depended on Goebel's death; nothing about his making a proposition to the mountain men to kill Goebel; I knew nothing about his alleged talk with Taylor about Goebel's death.

Remember, gentlemen, that I knew none of these things, and that during these times I was in the mountains of Ken-

tucky. I left Frankfort on the twelfth of January and returned the seventeenth, left again on the twentieth and did not get back until the twenty-fifth. If the testimony for the Commonwealth can be relied upon, I did not know any of these things and I did not know anything about the proposed plan to kill Senator Goebel until the twenty-ninth of January, 1900, if their own testimony can be believed. Then there is no necessity to go back to times prior to the twenty-ninth of January in this discussion. Youtsey said I did not know, and that my brother did not know anything prior to that time. He says that on the morning of the twenty-ninth, the Monday before Mr. Goebel was killed on Tuesday, that he went into my private office; that he found my brother sitting there at a desk, and he said to my brother — (he says he had never met my brother, never had any introduction to him. That is his testimony.) — Youtsey said he went up to my brother and said to him: "See here, I want a key to your brother's office, with which to put some negroes in there to kill Senator Goebel." What do you think of this story? What do you think of Youtsey's going to my brother, an unknown man, and asking for a key to his brother's office for the purpose of committing murder from there? What do you think of it, men? He says my brother — I presume for the purpose of having some one see him give Youtsey the key to my office — got up and walked out into the hallway of the Executive Building, a convenient place for Wharton Golden to see the transfer of the key by my brother to Henry E. Youtsey. What do you think of it? That is what Golden said, and that is what Youtsey said. Now, let us see what else Golden says on that matter. Golden says he saw my brother give Youtsey a wrong key to that office, and Youtsey says it was the wrong key. I have never understood the force of that wrong key proposition until it was explained yesterday. I had often wondered why it was that, if my brother was in the conspiracy to kill Senator Goebel, and my brother was willing for it to be done, why, instead of giving Youtsey the wrong key to that office to get in there with, he did not give him the right key. It has always been a mystery to me until the fertile brain of Colonel Hendrick came on

the scene yesterday and made it as clear as muddy water. He said that the reason was that my brother John was waiting for Jim Howard to get down to Frankfort and that he did not want Youtsey to kill Goebel. Why did he not want Youtsey to kill him, if he and I are implicated with Youtsey as claimed? Why did he want to delay the matter, and have another man, unknown to him, kill Goebel? Why should my brother be so "choicy" between unknown assassins? There is no testimony in this case of that character until that testimony was given in this case by the able attorney, Mr. Hendrick. I put the assertion on the part of Mr. Hendrick that my brother wanted either Youtsey or Howard to kill Goebel, on a par with another assertion he made yesterday. He made the statement "that no woman knew any law, that no woman had the capacity to learn any law." I want to enter in behalf of the ladies of our land a special and general denial to that slanderous charge.

Golden says he saw my brother give Youtsey a wrong key to the office, and directly my brother came to him in the hallway of the Executive Building and said: "We have two negroes here this morning to kill Goebel, 'Tallow Dick' Combs and Hockersmith," and Golden says: "That must not be done." My brother said to Golden, if Golden can be relied upon: "You need not be alarmed, I gave him the wrong key." He asked my brother who that fellow was to whom he gave the key. My brother did not know. Golden hied himself away after saying that it must not be done, and went over to Collier's office to get General Collier to put a stop to it. My brother went with him and, failing to find General Collier, he said they came over to the Capital Hotel; and that I saw my brother and Golden in the hallway and said to Golden: "We can not go to Louisville to-day." And we all went back to the Executive Building. Golden says we did not talk about what had happened between my brother and Youtsey on the way back; he did not know whether it had been decided to kill Goebel or not. He said he never talked to anybody about it that day and he never talked to anybody until long after Senator Goebel had been killed. In fact, he never talked to anybody about it until he was in the arms

of his savior, Colonel Thomas C. Campbell, going to Cincinnati to make a confession. This, gentlemen, is the testimony of Wharton Golden and Youtsey about the alleged transaction of the key.

Now, let us look into that a little. Let us see what bearing it has upon the case. Let us connect the statements of Golden and Youtsey with the facts that are not disputed, and see whether the statements of Golden and Youtsey are in harmony with these facts. Golden and Youtsey are either testifying to the truth or they are testifying to a lie. My brother either gave Youtsey the key to my office or he did not give him the key. Golden tells you that no one was present when my brother gave Youtsey the second key to that office, and that I was not present when the first key was delivered. Youtsey says there never was but one delivery and that was the wrong key, and that I was not present. Golden tells you that I was five or six steps in advance of my brother and Youtsey, and that I was going on toward my office, and that I did not see nor hear the alleged transaction about the second key. You see, gentlemen, he puts it out of my power to contradict him on that point; but Youtsey does contradict him. He says that he never got any second key. My brother is not here as a witness. The proof in this case, gentlemen, is that early on Monday morning I went to the Capital Hotel at Frankfort, for the purpose of making arrangements to send the mountain men back home. That I was over at the Capital Hotel there is no doubt; that fact is proven both by the testimony of the Commonwealth and by that of the defense. The difference in the contention of the prosecution and the defense is as to why I was there. The prosecution tries to make it appear that I was over there trying to effect some part of the alleged conspiracy to kill Senator Goebel. Golden, you remember, testifies that early on the Monday morning I said to him that I was trying to make arrangements to get off to Louisville; and that I had to go over to the Capital Hotel before I could make those arrangements; and that he showed me a letter from John H. Wilson, who was at Louisville, saying for him to come to Louisville. My testimony and Golden's differ on that point.

At any rate, Golden knew that I was over at the Capital Hotel on some business; and that, if I could get that business done, I intended to go to Louisville on that early morning train. And he says that a black-mustached man came to him and my brother in the hallway of the Executive Building and said something to my brother; that he did not know what he said, but my brother came to him in a few minutes and said that we had two negroes here to kill Goebel, and that when he asked John Powers who the black-headed, black-mustached man was, my brother said that he did not know who he was. Golden says that he went around to the Agricultural office to see General Collier to tell him about the murder going to be done, and to protest against it. Golden, who laughed and, when he heard that Goebel was killed, said that it was a "damn good thing" and he was glad of it—Golden, who was at all times willing, according to his own testimony, to go up into the legislative halls and kill off enough Democrats to make a Republican majority—that fiend, who, according to his own testimony, was ready upon all occasions to kill—for some unexplained and some unexplainable reason, upon this particular occasion was as smooth as a May morning, as harmless as a dove, as timid as a tomcat, as averse to the shedding of man's blood as a saint; his soul was terrified at the thought; his nature rebelled against it. That same Golden who, upon former occasions, and upon all occasions, was willing to walk over the blood of his dying victims; that same Golden who, on all after occasions, was willing to kill one or a dozen of those who opposed his supposed interests, as the necessities of the case might demand, the same Golden who, when he heard that Goebel had been assassinated, said that it was a damn good thing, was, upon this particular occasion, thrown into a moral tumult over the thought of harm befalling any one.

Golden went to General Collier's office, he says, to see him about it, and my brother went with him also to see about it; for, what else could be his purpose? If Golden did tell the truth about what the black-headed, black-mustached man said to my brother, and if my brother did say that there were two negro men there to kill Senator Goebel

and that it was going to be done that morning, and if my brother was in favor of it, as Golden said he was, I ask you why he would be going to General Collier's with Golden to put a stop to the thing? Why would he want the very thing stopped that, according to Golden, he was in favor of? Why should he? Ask yourselves that question. And why would he be giving the key to my office to a man he had never seen before? And if my brother was in favor of Senator Goebel's being killed, why would he have gone to General Collier with Golden to put a stop to it? Why would he not say to Golden that he ought to be killed, that it would put an end to the contest; that Golden would get his office and that we would all get our offices?

That is why these gentlemen say he was killed. Their contention is that we thought it would put an end to everything and give us our offices. If that is true, gentlemen, why did not my brother present those reasons for having Goebel killed to that blood-thirsty Golden and secure his coöperation in the matter? Golden, according to his own statement, was an open advocate of murder. My brother knew Golden; why did he not say: "See here, you are wrong about that; it is to your interest and to the interest of us all that he be killed?" Why did he not do that, gentlemen, instead of going with Golden to General Collier's to put an end to the very thing with which he is charged?

Why did they come to see me over at the Capital Hotel, to have the thing stopped? According to these, gentlemen, I would be the last man on earth to have stopped it. If there was a man in all that country, among all the people, who was in favor of violence and bloodshed and murder and assassination, it was I, if these gentlemen can be believed in what they assert. Golden says that on former occasions I said to him that Goebel ought to be killed and that I discussed a plan to kill him on the street, and in the Capital Hotel, and that I wanted to kill the members of the Legislature. Golden says he knew all that, and that I had personally discussed with him the contemplated acts of violence and murder. Then tell me why, gentlemen, he came to me to have a stop put to all these things? Why did he

MY ADDRESS TO THE JURY

e, the master conspirator, to put an end to violence?

he seek me among so many men whom he knew
and who were at Frankfort, to put a stop to this proposed
shedding of man's blood?

Golden had lived for some two years at Frankfort; he knew a great many men; he knew George Long. He says Long knew him well enough to recommend him for a position; he knew the other men who had been elected on the state ticket. Why did he not go to some of these men and not to me, if he wanted to put a stop to this proposed murder? But he comes over to the Capital Hotel to see me, and when he gets there he does not even talk to me about it. He says that my brother said he would talk to me about it, and for him to let my brother do the talking. He says that he did that; that my brother did come and talk to me and that I frowned while my brother was talking to me. What was I frowning about? He said that we all went back to the Executive Building; that we did not talk about the matter on the way over there; that he never did say anything to me about the proposed killing of Senator Goebel by the two negroes.

According to his testimony, gentlemen, he went back to the Executive Building without knowing what had been decided upon, as to the killing of Senator Goebel by the two negroes. He did not know whether it had been decided to kill him or not to kill him. And yet the fact remains, according to his own testimony, that at no time during that day did he ever mention to a living soul the proposed plan to kill Senator Goebel. He says that he went over to the Capital Hotel to have an end put to the proposed killing, and still he left the Capital Hotel without knowing what was going to be done about it. According to that fellow's own testimony he never did tell me about the proposed plan to kill Senator Goebel. If his own testimony can be believed he never told a living man on earth — until he told Colonel Campbell on his trip to Cincinnati, long after Goebel had been killed.

Is that not a most remarkable case, gentlemen, that in the first place, he would come to one who, he had all reason to believe, if his own story can be credited, would not only not hear to his plans for peace and for humanity, and for

law, and for order, but would severely reprimand him for his own lack of willingness to kill or to do anything else to hold the offices? Is it not remarkably strange that he did not go to some one else? And is it not stranger still that after going over to the Capital Hotel, and then not knowing what was going to be done about it, he made no inquiries concerning it, no revelations about what he had heard, from that good day until he went to Cincinnati some two months afterwards? Is it not strange that he breathed not to a living soul what he had heard on that Monday morning? Is it not strange that he never thought to tell any one until long after Goebel had been killed?

Suppose, Mr. Wyatt, there was a conspiracy on foot to burn your home, and suppose somebody heard a minor conspirator talking to a major conspirator about burning your home, and he went to the minor conspirator and said:

"See here, Mr. Wyatt is a respectable man in the community. He has earned his home by hard labor and hard work and you must not burn his home," and suppose the fellow said to the minor conspirator: "Let's go and talk to the major conspirator about it;" and that he did do this and stood up close, but didn't know what was decided to be done. Suppose that he did not know whether it was decided to burn your home or not to burn it, and he went away with the two conspirators and did not know what was going to be done about it, and never mentioned to a single soul what was contemplated until long after your home had been burned; and when it was burned, suppose the man alleged to be interested in saving your home said: "It was a damned good thing, and I was glad of it." How much weight would you attach to his testimony to the effect that he was opposed to your home being burned? How much credence can you give to Golden's testimony that upon that morning he was opposed to the killing of Goebel and said that it must not be done, and when he did hear that Goebel was killed, said that "it was a damned good thing, and that he was glad of it?"

It is true that I was over at the Capital Hotel on that Monday morning, and it is further true that I would not have been over there at the Capital Hotel unless I had had some

business over there. I do not go to such places or go into men's rooms unless I have some business with them. These gentlemen intimate that I was there to see General Duke about some plan connected with the killing of Senator Goebel. You heard the speakers in this case yesterday intimate that General Duke was the head of everything. Then, if I was over there to see General Duke on anything connected with the conspiracy to kill Senator Goebel, General Duke is more guilty than I could possibly be, because he is an older man than I am; he knows much more than I do about men and affairs; and if you believe that General Duke was in the conspiracy to murder Senator Goebel, I want to ask you, Mr. Franklin, why you have sat here for over three years and witnessed vile conspirators strike down your party associate and go through this state unmolested, undisturbed, uncondemned and unharmed?

General Duke asks no governor of any adjacent Commonwealth to protect him from your courts, or you. You can get service on him seven days and seven nights out of every week of every year. You have not done that. The truth is, Mr. Franklin, you know General Duke had nothing to do with the conspiracy to murder Senator Goebel. Then if he did not have anything to do with it, I could not have been over at the Capital Hotel that morning for the purpose of seeing General Duke on anything connected with the conspiracy to murder Senator Goebel, and if I was not there to see General Duke on any such business, why was I there?

What is the testimony in this case? Silas Jones, a witness for the prosecution, tells you that I agreed to get him a pass to go home. Milton Prosper, a witness for the defendant, tells you that on that Monday morning I agreed to get him a pass to go home, and that he did go home on the third of February. A. V. Hite tells you, and the deposition of Walter Day tells you, that he heard me telephoning from the auditor's office to Louisville, trying to get transportation for men to go home. And in this connection I desire to call attention to the depositions in this case. Why, it was said but yesterday by attorneys for the prosecution that the depositions did not mean very much; that all there was

to it, or about it, was that it was only an affidavit of the defendant. If I do not state the law accurately in this case, I want this honorable court to correct me. Those affidavits are the depositions of the absent witnesses. It is agreed that those witnesses, if present, would state as in this affidavit, if they were present here to testify. It is not my affidavit but the depositions of the witnesses, and if the prosecution had any doubt about those statements being true, they had a right to bring in other testimony to contradict the statement contained in those depositions and they had a right under the law to impeach the witnesses whose depositions you heard read here in your hearing. It is a fact, known to the prosecution in this case, that Walter Day has testified on both of my former trials and that he testifies to these various things. Walter Day tells you I was in the auditor's office telephoning down to Louisville, trying to make transportation arrangements to send the mountain men home. A. V. Hite, the depot agent at Frankfort, tells you that he received a telephonic communication from Louisville telling him that they had been called up by the secretary of state's office, and they wanted him to go to my office and say to me that they had made a rate of one cent a mile for the purpose of sending the mountain men home. The testimony in this case is that I called up the transportation agent at Louisville that morning and asked him to send the coaches on the afternoon train, and the testimony further is that I was sent for by Governor Bradley to come over to the adjutant general's office in the red brick building, and that Governor Bradley said to me that he understood that I was going to send the mountain men home. He said I must not send the men home. "There is going to be an argument before some of the contest committee, and you must not send them all home," he said. The testimony is that, had it not been for Governor Bradley, those mountain men would have been sent home on Monday, the evening before the killing of Mr. Goebel on Tuesday morning. They say: "Why didn't you call Governor Bradley to the witness stand and prove this by him?" I hurl it back into their faces and say: "Why didn't you call Governor Bradley to the witness-stand and contradict me in that asser-

tion if I am swearing falsely about it?" I have sworn to it over three years. They have had Governor Bradley before the grand juries of the country, and they have had him as a witness in the Ripley trial. They know Governor Bradley would not contradict me. Then I would have sent the mountain men home on Monday morning before Senator Goebel was killed, if I could have made the necessary transportation arrangements. The testimony is, that I would have sent them home on Monday afternoon had it not been for Governor Bradley. Now, the prosecution has always maintained that those mountain men were there, retained in Frankfort, for the purpose of killing Mr. Goebel.

That is their contention. They assert they were retained in Frankfort, and that the culmination of the dastardly deed could not be reached without the presence of the mountain men; that is their charge. Now, I want you to ask yourselves this question, when you get to your jury-room, when it becomes your duty, under your oaths and the law, to pass upon my most sacred rights—ask yourselves this question: "If that young man had known anything about the plan to kill Senator Goebel by the two negroes Monday morning, would he have been trying to send the men home on that Monday morning? If he had known anything about the plan to kill Senator Goebel on Tuesday morning, would he have been wanting to send those men home on Monday afternoon; and the testimony is beyond dispute that I would have sent them home had it not been for Governor Bradley. I knew nothing of the plan to kill Goebel with the two negroes. I knew nothing of the alleged key transaction. I know nothing of this alleged conspiracy. I was not a party to it.

Even Youtsey says that I did not know anything about the negroes being ready to kill Goebel, or anything about the alleged transaction of the wrong key between himself and my brother; for did not Youtsey say that after my brother had given him the wrong key to my office, I came to him and said: "My brother tells me that you have two negroes here to kill Goebel, and that he has given you the wrong key;" and that I then said to him: "I can not give you the keys to that office, but it shall be at your disposal." Did

not Youtsey say that? If this statement be true about the transaction of the wrong key and the two negroes, I did not know anything of the alleged plan to kill Goebel with the negroes.

On the former trials in this case, these gentlemen prosecuting me have, in their speech-making capacities, sworn to other juries until they were black in the face, that my trying to send the mountain men away on the Monday morning before the killing was a farce; that the statements of witnesses to the effect that, if I could have made the necessary transportation arrangements to have sent the mountain men home on that morning, I would have gone to Louisville to meet a young lady friend of mine, was all hypocrisy and deception. They said that the reason why I did not go to Louisville on that morning was, not because I failed to make transportation arrangements for the men, but because there was a failure in the plan to kill Goebel with the two negroes, from the fact that my brother had given Youtsey the wrong key. And on this theory of the case, they asked other juries to hang me. Now, Youtsey overturns it all and says that I did not know anything about the transaction of the wrong key, or the killing of Goebel by the two negroes at that time, but that I came to him later and told him what my brother had revealed to me.

Golden says when he got to the Executive Building he saw my brother give Youtsey a second key to my office. Youtsey says that is not true. Youtsey says Golden lied about that. Youtsey says he got but one key to that office from my brother, or anybody else, and that was the wrong key, and that was before that time and on the same morning. But when we got back to the Executive Building on the morning of the day Senator Goebel was killed, Youtsey says I came to him later on in the day, into his little private office, and said to him: "I understand you have two negroes here to kill Goebel; John Powers told me that, and I want to know what about it." Youtsey says: "That is all true." And Youtsey testified that I then said to him that I could not loan him the key to that office—that he then went with me over to the glass door leading from the

hallway into the private office of the secretary of state, and that here he said to me: "Now, you can put your foot down on this thing and stop it if you want to. All you have to do to keep Goebel from being killed is to put your foot down on it and it will not be done." But Youtsey says I didn't do that, but that I said: "I can not loan you the key to my office, but I will fix the door so that, at any time you want to, you can walk in and make yourself at home." He says that I unlocked and unbolted the little door leading into the private office from the hallway and left it in such a condition that anybody who would push against it, could open it; and that he said for me to be away from my office and that I agreed to it. That is his testimony. This is the only conversation, he says, I ever had with him relative to the killing of Senator Goebel.

Now, let us see about that. If his testimony be true—but it is every word a sworn lie—but let us consider for the present that it is true, and look at it from that standpoint and see what it proves. If it be true, then I must have left the door ajar on that day for the purpose of having Mr. Goebel killed by Hockersmith and Dick Combs, after I had found out that they wanted to kill him. The testimony in this case is, that I did not then know Dick Combs, and that I had never seen or heard of Hockersmith. But, of course, a little thing like that could not shake the credence of the story told by this divine lover and server of truth—Henry E. Youtsey. Youtsey said I agreed to be away from my office and that he said to me that I had better be away; that he didn't want me mixed up in the matter, and he wanted me away and I agreed to be away. Can not you see his solicitude for me? Then, if I agreed to be away from that office on January twenty-ninth for the purpose of having the negroes Hockersmith and "Tallow Dick" Combs kill Goebel, I certainly lied to Youtsey, because I was in the office on that very day and I remained in it all the day, and that is the testimony in this case. Then, when Youtsey said that I agreed to leave the hall door open for the purpose of having Goebel killed by Hockersmith and "Tallow Dick" Combs, and that I would also be away from that office, to let it be done from

there on that day, he certainly lied about it or I lied to him, one or the other, because I was in my office the whole of that day. Neither Hockersmith nor Dick Combs tried to kill Goebel from that office on that day. There is no proof of it in this record. Then I certainly did not leave that office-door ajar for the purpose of having Howard kill Goebel on the next day, for Youtsey says himself that he found it locked on the next day.

But let us look into the matter a little further. Mr. Campbell said in his opening statement to this jury (I am sorry the colonel made a contrary statement in his speech): "If Caleb Powers gave Youtsey the key, then Caleb Powers should give his life for the life so ruthlessly taken. If Caleb Powers did not give the key to Youtsey he has gone a long way toward helping the side of the defense in this case. I can not be fairer than that. I say, if Caleb Powers did not give the key to Youtsey, he has broken an important link in our chain of evidence. If he did give it, I believe, as I have to answer to the God above, that I can see no escape from the conclusion of his guilt. I am reminded that I say Caleb Powers. What I should have said was that Powers gave the key. John Powers got it from his brother and gave it to Youtsey."

That is what Mr. Campbell said in his opening statement in this case. He said if he could not show that either myself or my brother gave Youtsey the key to that office for the purpose of having Goebel killed from that office, he would admit that a strong link in the testimony of the prosecution of this case had been broken. Let us see if the colonel has not almost admitted me not guilty. If the testimony of Youtsey and of every other man who has testified about it can be relied upon, then a strong link in the chain of testimony for the prosecution in this case *has* been broken, because Youtsey says he got but one key to that office, and that was the *wrong* key, on the Monday before the tragedy, and that he never got a right key from either myself or my brother. That is the testimony of Henry E. Youtsey. I testified that he never did get a key from me. Youtsey says that he did not have any key on the day Goebel was killed, but

that he went through an *open door* leading from the reception-room into the private office. Then what becomes of this alleged key business? Has it not been eliminated from this case? Have not both the mountain crowd and the alleged key transaction been eliminated? If the testimony can be relied upon, is it not true, that no man who came with that mountain crowd killed Goebel; and is it not further true, that Youtsey did *not* get the key either from myself or my brother with which to get into my office on the thirtieth of January?

You remember, gentlemen—it is a part of the current history of this state—that on both of my former trials in this case the prosecution begged the juries to take from me my life on the theory that John Powers gave the right key to my private office to Henry E. Youtsey, and that John Powers did that at my solicitation and at my request. They have asked former juries to take my life from me on that proposition. *They not only deceived the former juries in this case and the country at large, but they deceived the Democratic minority of the court of appeals of this state, because they said in a dissenting opinion that there was no doubt in their minds but that Youtsey got the right key from my brother and that he had gone into my office through the glass door that leads into the hallway and killed Mr. Goebel from that office. They have not only deceived the juries of this county, but they have deceived the highest tribunal of this state.* Now, the prosecution takes a double somersault from their former position and says that none of what they have formerly asserted is true; that the only thing that is true, is that I agreed to be away from my office when Senator Goebel was killed.

Youtsey says that the outer door from my private office to the hallway was *locked* and that he had to go *through the reception-room* into the private office to open that door on the thirtieth of January. Then, if I am connected with Henry E. Youtsey at all, if his own testimony can be relied upon, it is the connection of allowing him to go through that *open door* on the thirtieth for the purpose of using that office for murder, *and not, as the people have been taught to*

believe, that he got the key from my brother. Is not that true? Have I not stated it fairly? I say if I had any connection with Henry E. Youtsey, so far as the killing of Mr. Goebel is concerned, it must be the connection by leaving that door *open* that leads from the reception-room into my private office for the purpose of having murder committed from there. The other door was *locked*. Youtsey, Golden and myself all testify to that. Then that door was not left open for the purpose of Youtsey's getting in that office to commit murder.

Now, let us take up the testimony in this case and see whether or not I did leave that other door *open* for the purpose of letting Youtsey go in there to kill Senator Goebel. What is the testimony? The testimony is, even by Colonel Campbell's first love and first star-witness, Wharton Golden himself, that he came into my private office the Tuesday on which Senator Goebel was killed and said: "Rush up or you are going to miss that train," and he says I went to the door leading to the reception-room and *locked the door and bolted it on the inside*. That is the testimony of Wharton Golden. He testified to that in all these trials, even before Youtsey ever became a witness in this case—even before Youtsey was arrested. Youtsey says the door was open, but Wharton Golden, another star-witness for the prosecution, says the door was closed, and that it was locked on the inside and bolted. Now, whom are you going to believe, Henry E. Youtsey or Wharton Golden? Wharton is swearing to prevent himself from getting into the penitentiary and Youtsey is trying to swear himself out of it. You can believe whichever one you want to, or you can set them both aside and say we can not believe either one of them; because they are both star-witnesses for the prosecution, and they are testifying diametrically opposite, each to the other. What else do we have in this case upon that proposition? Mr. Nickell, who has testified for the prosecution, said that he had some business with Governor Taylor on the morning of the killing, and while he was sitting in the reception-room, waiting to see Governor Taylor, that he saw some man go into that private office and come out and go into the private

office of the governor. That is the testimony of Mr. Nickell. Now, Mr. J. M. Hardgrove, a witness for the defendant, says that he was also sitting in that reception-room thirty or forty minutes before Mr. Goebel was killed, at the very time Mr. Nickell says he was sitting in there, and Mr. Hardgrove says that no man went into that office during that interval; that he did see some man, who, he believed, was Grant Roberts, go and try to get into that office, and he failed to get in there. Mr. Hardgrove is corroborated by Mr. Roberts, because he says that he did try to get into my private office and failed, because the door was locked, but you can believe Mr. Nickell or you can believe Mr. Hardgrove, just as you like about it. One or the other of them lied. There is no doubt about that. Then, what else do we have?

Golden stands up against Youtsey. They are both star-witnesses, and as far as I am concerned, you can cast their testimony to the winds and not believe either. Mr. Hardgrove says the man did not go in, and Mr. Nickell says he did. So far as I am concerned, you can believe neither. Then what do we have?

In addition to this testimony, R. N. Miller tells you that he tried to get into that office between half-past nine and eleven o'clock and he found the door *locked* and he could not *unlock* it. Grant Roberts says that he had some business in the private office of the secretary of state, and you noticed the manly bearing of that young man, Grant Roberts, upon the witness-stand. He tells you he tried to get into that office on that morning on some business connected with the auditor's office and failed to get in there. Then, if the testimony in this case can be relied upon, Henry E. Youtsey did not go through that door. What else?

Jim Howard says it is all untrue that Youtsey went around through that reception-room and let him into that private office. Then what is the testimony in this case? Henry E. Youtsey and Mr. Nickell, upon the side of the prosecution, say that the door was open, and J. M. Hardgrove, Wharton Golden, R. N. Miller, Grant Roberts, Jim Howard and Ben Rowe and myself, all on the other side, say that the door was *locked* on that occasion and that they

could not get in there. That is the connection they have between me and Henry E. Youtsey, and what are you going to do about it? Are you going to say that Youtsey is a gentleman and a truth-teller and a saint? Youtsey says anybody will lie when he gets into trouble, no matter how honest he may be before that time. That is Youtsey's idea. That is what Youtsey said on the witness-stand. Then what are you going to do about it? That is the only connection between me and Henry E. Youtsey so far as the death of Senator Goebel is concerned, if his own words can be relied upon. Are you going to say beyond a reasonable doubt that Youtsey is a gentleman and a truth-teller? Are you going to say that Youtsey is the only man in all this case who is entitled to belief? Are you going to say beyond a reasonable doubt that R. N. Miller, former county attorney of Breckinridge County, swore to a lie, and that Grant Roberts, the brother of the able editor of the *Lexington Leader*, swore to a lie, and that J. M. Hardgrove swore to a lie, and that Ben Rowe swore to a lie? Ben Rowe is another man who says he tried to get into that office between ten and eleven o'clock, and Mr. Franklin called him on the proposition, and said: "Ben, didn't you say on the former trial in this case that you got back to that office and unlocked it about half-past nine when, if Powers can be relied upon, he had locked the door and bolted it on the inside and gone to Louisville?" and Ben says: "I don't remember about that; I don't think I did." But put it as Mr. Franklin wants it. That door was, as a matter of fact, at half-past nine, locked from the inside. But let Mr. Franklin take whatever horn of the dilemma he likes. That door, on that occasion, was locked and bolted, or it was locked and *not* bolted. Then, if it was simply locked, as Mr. Franklin tried to get Ben Rowe to say, then what do we have?

Ben Rowe had a key to the office, W. J. Davidson had a key to the office. One was the janitor; the other the assistant secretary of state; both had access to, and frequently business in, that office. The door might have been left open by them. If that door, on that occasion, was simply locked and not bolted, there is no telling how Youtsey got in there.

He might have gotten in there through one of those people. Let Mr. Franklin take whatever horn of the dilemma he likes. Then, are you going to say that Miller and Hardgrove and Grant Roberts and Wharton Golden and Jim Howard and Ben Rowe swore to a lie beyond a reasonable doubt, and that Henry Youtsey is a living embodiment of all the manly virtues, and that the testimony of this convict and self-confessed perjurer is entitled to more weight than all these other gentlemen, who are not confessed perjurers, and whose testimony the law does not challenge, but respects? And this connection of this door is the only connection that they have shown between Henry E. Youtsey and myself in this case. What are you going to do about it?

Now let us take up the other door and discuss that in this connection. You will remember that Youtsey said on the twenty-ninth of January I agreed to leave the door that leads from the private office to the main hallway ajar. I have not discussed that door on the morning of the thirtieth, when Senator Goebel was killed. Let us see in what condition we find that door.

Golden says that I pulled that door to as I went to Louisville that morning; that it was a Yale lock, and that it locked itself; that I pushed against it and that it was locked. He is a witness for the prosecution. I said in my testimony that the door was locked, and even Youtsey himself says that the door was locked, because he says he took Jim Howard to that door to wait for him while he (Youtsey) went around through the reception-room into the private office and *unlocked* the glass door and let Howard in. So, if the testimony can be relied upon, that door was also locked. Then you say to me: "Mr. Powers, we are of opinion that the shot was fired from the office of the secretary of state, and you have proven to us here by the testimony in this case that both of those doors were locked. If that be true, I would like to know how it is that that shot could have been fired from the office of the secretary of state?" Why, gentlemen, all we have to do in order to determine this matter, is to go to the prosecution for testimony. They give us an explanation of it. What does Culton say? Cul-

ton says that Youtsey said to him away back in January that he had the slickest scheme yet to kill Senator Goebel; *that he had a key to the office of the secretary of state*, and he could go in there and pull down the blinds and a man could shoot Senator Goebel and escape through the basement. That is what Culton tells you that Youtsey said to him away back in January. *If Youtsey can be relied upon, he did not get that key from either myself or my brother. He never did get the right key from either of us to that office, and he attempted to get only one key and that was on the twenty-ninth of January, the day before Senator Goebel was killed.* That is what he says about it. Then, relying upon the testimony for the prosecution in this case, you see how Senator Goebel could have been killed from the office of the secretary of state. Youtsey told Culton that he had a key to that office or a key that would unlock that office, and Youtsey said that he didn't get it from myself or my brother; that he didn't try to get a key from either of us until the twenty-ninth of January, 1900. But how else could the shot have been fired from that office? Why, it is in the testimony in this case that those Yale locks are numbered on the inside and anybody who was in that office could have got the number to those Yale locks and got a key to fit them. The testimony in this case is that there ought to have been three keys to the side door of my private office that leads into the main hallway, and the testimony is that I never did get more than one key to that office when the office was turned over to me. The two keys are unaccounted for, and one of those two keys might have been used in getting into that office. The prosecution tells you that the windows to the private office of the secretary of state were up on the thirtieth of January. If they were up, or if they could be raised, somebody might have raised those windows from the outside and got into that office. Some one could have gained access to that office in all these ways. You know that burglars roam over the country and can unlock your door and get into your house and get into your money-drawer. There is a noted burglar in the Georgetown jail now. He tells me that he can pass by any door in this town

and see the kind of key that unlocks it and go off and in a half an hour have a key made and unlock that door. If Youtsey is the same expert in getting into offices and making keys and things of that character as he is in determining the grains of powder in a cartridge; if he has the same knowledge about things of that character as he has about guns, nobody would doubt that he could get into that office. But if what both he and Culton say about it can be relied upon, he got hold of a key away back in January that would unlock my private office, and if what Youtsey says can be believed, he did not get that key, either from my brother or myself.

Then, if testimony can be believed, I did not leave that office open on the day of the tragedy for the purpose of having murder committed from there. Youtsey, Golden and myself all say that the door leading from the private office into the hallway was locked on that day, and R. N. Miller and Grant Roberts, who had business in my office connected with the auditor's office, and Ben Rowe, the janitor, and Wharton Golden and J. M. Hardgrove and myself all say that the door leading from the private office into the reception-room was also locked. Jim Howard indirectly says the same thing, because he says that Youtsey did not let him into that office, as is claimed by Youtsey, and the only two witnesses to the effect that the door was open on the thirtieth were Youtsey and Nickell. And you know that the door leading from the reception-room into my private office was *locked and bolted from the inside on that day*; for when Goebel was shot and an angry crowd in the street was threatening to mob the occupants of the Executive Building, those in the reception-room tried to get into my private office through the reception-room door for the purpose of getting the guns in that office with which to defend themselves. The proof is overwhelming, and not contradicted, that the door was *locked and bolted on the inside*, and Matthews had to climb through the transom in order to get into that private office. Rowe, Miller, Todd, Hardgrove and others testify to that. That fact is not disputed. Then we must conclude that the door leading from the reception-room into my private office was locked on the day of the tragedy, and not left open, as Yout-

sey claims, for the purpose of giving him access to that office in order that murder might be committed from there. And I have explained to you how Youtsey did have access to that office on former occasions, and without my knowledge or consent, if his own and Culton's testimony can be believed. And you remember that thirty-two Yale keys were found in a drawer in Youtsey's little office after Goebel had been killed, and how nearly one of them came to unlocking the glass door to my private office. What was Youtsey doing with all those Yale keys? Answer me that. Now let us take up and discuss further the claim on the part of the prosecution that I left my office open on the morning of the thirtieth for the purpose of letting murder be committed from there.

Youtsey says that I agreed to be away from my office for the purpose of letting murder be committed from there, and leaving it accessible for murder to be committed, and the Commonwealth says that Youtsey is corroborated in that proposition because, they say, I was away on the thirtieth of January, 1900. It is true, gentlemen, I was away, and I want to say to the Commonwealth right here, that I will risk the fate of my case upon why I was away from Frankfort on that day. Whatever may be said about me up to that time; whatever rash conduct or incendiary speech may have been attributed to me, or has been testified to by anybody who has sworn against me; whatever may have been said upon the side of the defense, so far as I am individually concerned, I am willing, gentlemen, for you to erase from this case all that has been proven in it up to this time and risk my fate in your hands upon the purpose of my trip to Louisville that day. If my trip to Louisville, as is asserted by the prosecution, was in bad faith; if my trip to Louisville was for the purpose, as is said by the prosecution, of permitting my office to be used for the purpose of letting murder be committed from there, and for the purpose of being out of the way and trying to take suspicion from myself—I say if that claim on the part of the prosecution be true, it does not matter what else may have been proven in this case, in that event, I would be guilty. I say, if that be true, it does not matter what else may be proven on

the part of the prosecution,—in that event I am guilty; but I say to you, on the other hand, if my trip to Louisville on that day was in good faith, for the purpose of getting a crowd of people, mostly from Western Kentucky, to come to Frankfort to petition the Legislature, as is claimed by the defense, *whatever else may have happened up to that time*, I am not guilty, because I could not be guilty if I were going to Louisville for the purpose of getting up a crowd of people to come to Frankfort to petition the Legislature; for if I had known Mr. Goebel was going to be killed, such an act as that on my part would have been a useless and senseless one, and such a mission as that would have been the height of nonsense and folly. One of the attorneys on the part of the prosecution said yesterday: “Why didn’t you go and get your peaceful petitioners from Western Kentucky after hearing that Senator Goebel was killed? What did the killing of Senator Goebel have to do with it? Why did you stop and why did you come back to Frankfort?” You know why. There is not a man in this case but knows that it would have been as useless and as senseless to plead to the Legislature after Senator Goebel had been killed and when the bosoms of our lawmakers were heaving with rage at the dastardly and cowardly crime that had been committed in Frankfort—it would have been as useless, I say, to plead and petition them when they were drunk with passion and filled with hate—as it would be for a man to beg and plead to the Niagara Falls not to hurt him after he had thrown himself from its precipice and was going down into the depths of its awful abyss. So, the mission of my trip to Louisville on the thirtieth of January is a most important matter in this case. If I were going in good faith, I am not guilty. If I were going in bad faith, I am guilty. How are we to determine the purpose of the trip? Let us be fair with each other. How can we determine whether my trip to Louisville was in good faith or in bad faith? We have to determine that from the testimony in this case. Not from what I say about it; not from what the lawyers on the other side of this case say about it. That should not weigh as much as a straw with you one way or the other, in the rendition of your

verdict. You have to determine that matter from the testimony in the case; and what is the testimony as to the purpose of my trip to Louisville on the thirtieth of January, 1900?

Golden says he did not know why I was going to Louisville on that day; that, so far as he was concerned, he had a letter from John Henry Wilson to come there, and that that was his business to Louisville, but he did not know why I was going or why my brother was going. He did not know why Long and Day were going. He did not know anything about it. So the only man on the side of the prosecution who gives us any reason for my being away from my office on that day is Henry E. Youtsey, and he says I agreed to be away from my office that it might be accessible for murderous purposes. What has the defense to refute the testimony of Henry E. Youtsey? It has this: R. N. Miller tells you that on the night of the twenty-ninth of January he discussed with me at my boarding-house, in Frankfort, the plan of bringing a crowd of petitioners from Western Kentucky on the following day. Walter Day tells you in his deposition in this case that on the evening of the twenty-ninth of January, between the hours of four and five o'clock, he came into my office and said that Governor Taylor wanted him and myself and others to bring a crowd of petitioners from Western Kentucky. The testimony is that W. J. Davidson was also a member of that meeting. I testified that the meeting was held. What has the prosecution to rebut that testimony? We say that we were discussing the trip to Western Kentucky and we decided to sleep over the matter that night and meet at my office early on Tuesday morning and decide whether we would go to Louisville that day. The idea was that the contest committee would decide the case in a few days and if we were to get anybody from Western Kentucky we had to get them at once. These men tell you we did meet at my office the next morning. J. Lon Butler, on the witness-stand here, tells you that he was called into that meeting on Tuesday morning and that we decided to go into Western Kentucky to get a crowd of petitioners to petition the Legislature. And, as I said to start out with, if we were going to get a crowd of petitioners to petition the Legislature,

we could not have known that Senator Goebel was going to be killed, because our mission in that event would have been a useless and senseless one. A man with a spoonful of brains in his cranium would have known that the people would be swept off their feet at such a cowardly and atrocious and brutal murder as that of Senator Goebel. You know that the people at the time were in no state, or frame of mind, to be reasoned with. Butler tells you that we were going to get a crowd of people to petition the Legislature. Day tells you we were going to get a crowd of people to petition the Legislature. So does Davidson, and I testify to that myself. Whom are you going to believe, Day and Davidson and Butler and Miller and myself, or Henry E. Youtsey? You have either got to believe Henry E. Youtsey or you have to believe these other men. Before you can claim my trip to Louisville on January thirtieth was not in good faith, you have to say that Walter Day, W. J. Davidson, J. Lon Butler, R. N. Miller and myself all swore to a lie beyond a reasonable doubt. What are you going to do about it? After that meeting is over, Day, Butler, Long, Golden, my brother and myself went to the depot, on our way to Louisville. Lon Butler says that we discussed the trip to Western Kentucky on the train. He said he agreed to get the men on the Illinois Central Railroad. He is a traveling man and lived in that section of the state and was well acquainted throughout the entire Western section of the state. The testimony is, if George W. Long can be believed, that he and I discussed the matter of getting petitioners from Western Kentucky on the train going to Louisville that day; and that we made a list of the stations from Henderson around by Bowling Green, and made an estimate of about the number of men we could get and about the cost of transportation. That is the testimony of George W. Long. The testimony is that more than an hour, or about an hour, before Senator Goebel was killed, George W. Long sent two telegrams from Christianburg to Ed Mentz, of Glasgow Junction; to Jim Frank Taylor, of Glasgow, and E. U. Fordyce, of Bowling Green, calling them to Louisville. You heard those telegrams read here by two or three people. They are here and speak for themselves.

There is no doubt about that. Here was George W. Long sending telegrams to Ed Mentz, E. U. Fordyce, and Jim Frank Taylor to meet us at Louisville, Ky. Why was this done? Do you pretend to say that George W. Long was in the conspiracy and in the plot? Do you mean to say that he was in the conspiracy and that he, too, was trying to cover up his alleged connection with the crime? Do you mean to say that Walter Day was in the conspiracy and that he was trying to cover up his alleged connection with the crime? Lon Butler said he wrote and Long signed the telegrams. Do you mean to say that Lon Butler was in the conspiracy and that he was trying to cover up his alleged connection with the crime? Do you mean to say, Mr. Franklin—you, whose sworn duty it is to prosecute all violators of the law in this the Fourteenth Judicial District of the state of Kentucky—that you believe they were in the conspiracy and you are not prosecuting them? If you do, you have been false to the people who elected you and untrue to your oath of office. If that be true, you are the worst enemy the state has within its confines this day, although you say it is filled with murderers and assassins. The truth is, Mr. Franklin, you don't believe a word of it. The truth is, you know that Long and the other men were not in the alleged conspiracy. Then, if they were not in the alleged conspiracy, they were not sending those telegrams to Jim Frank Taylor, E. U. Fordyce and Ed Mentz, in an attempt to cover up their alleged connection with the killing of Senator Goebel; and if that is true, why were these telegrams sent? For what purpose were they sent? They were sent, if the testimony can be relied upon, to get E. U. Fordyce, Jim Frank Taylor and Ed Mentz to come to Louisville on the night of the thirtieth of January for the purpose of helping get up a crowd of petitioners to come to Frankfort from the western end of the state. That being true, we did not know that Senator Goebel was going to be killed, as heretofore explained. And on the way to Louisville, about an hour after the telegrams were sent, the news was reported through the train that Senator Goebel had been shot from the second or third story of the Executive Building—shot down in the State House

yard. The testimony is, that I said, as soon as I heard it, that it was a shame and an outrage and that it had ruined our chances to win in the contests. That is what I said, men. But Golden adds that I said it sarcastically. He didn't say that the first time he testified in this case. He said nothing about my using those words in a sarcastic manner, but, when he was told by those who have him in charge: "Golden, if you are expecting immunity from the Commonwealth, you must testify for the Commonwealth, and it won't do to say that Powers said upon hearing that Senator Goebel was killed that it was a shame and an outrage, and that it had ruined our chances to win, because, if Powers uttered those words, and said them in earnest, he certainly was not in favor of Senator Goebel's being killed; for he certainly knew if Goebel were killed that it would ruin the chances of the Republicans to hold their offices." And Golden changed his story and now says that I uttered those words sarcastically. The prosecution says, when they are confronted with overwhelming evidence of my innocence, that I am a Dr. Jekyll and Mr. Hyde; that I do not mean what I say, that I am acting a double part, that there was nobody more glad than myself to hear the news that Goebel had been shot down. These are the things that these gentlemen say; but I want to leave it to you, if I did not speak the truth, when I said that it was a shame and an outrage when Senator Goebel was shot. I leave it to your honest hearts, to your own sense of right and wrong, if it was not an outrage when Senator Goebel was shot down like a dog by an assassin's bullet. I leave it to you further, if I did not speak the truth, when I said that it had ruined the chances of the Republicans to win in the contests. The whole world knows that the Republicans lost their offices, and didn't I speak the truth when I said it would ruin the chances of the Republicans to win in the contests? Any fool would have known that. Any fool would have known, if Senator Goebel had been shot down from the Executive Building, occupied by Republicans, shot down in the State House Square, that the Republicans would be charged with it; and if they were charged with it, would not anybody

know that it would ruin the chances of the Republicans to win their offices, when they were being contested before Democratic tribunals? Would I not have known, and didn't I know, that such a thing, charged to the Republicans, would make the board of Democratic election commissioners decide against me in my case?

We go to Louisville and what else do we have? Jim Frank Taylor was put upon the witness-stand in this case for the defense. "Mr. Taylor, did you receive a telegram from George W. Long to come to Louisville on the evening train of January thirtieth, 1900?" "Yes, sir." "Did you come to Louisville in response to that telegram?" "Yes, sir." "Did you know why you were going to Louisville before you got there?" "No, sir." "Were you informed of the purpose after you got to Louisville?" "Yes, sir." "Tell what that purpose was." "We object, we object," says Mr. Franklin. Why object to letting Mr. Taylor tell this jury and tell this country that he was called to Louisville to help get up a crowd of people to petition the Legislature? You claim to have no desire in your heart to prosecute an innocent man. You claim that you are acting only in the discharge of your official duties; and if that be true, why is it you did not let Jim Frank Taylor tell this jury that he was sent for to come to Louisville to help get a crowd of petitioners to petition the Legislature, from Western Kentucky? Why didn't you do it? And when E. U. Fordyce and Ed Mentz were put upon the witness-stand, they were asked if they had not received telegrams from George W. Long, calling them to Louisville, and they said they had, and they read the telegrams here in your presence, and when the question was finally put to them, "Did George W. Long tell you the object of your being sent for to come to Louisville?" they said, "Yes." "What was that purpose?" "We object," piped out a chorus of voices on the part of the prosecution. Why did they object, if they had no desire that an innocent man be punished? Why not let the truth in this case come out? Why not let me show that I was on a legitimate mission on the thirtieth of January, and, therefore, could not have known about any plot to kill Senator Goebel? Why don't they deal fairly with me?

As I said to start out with, if my trip to Louisville was in good faith, I am not guilty. If it was in bad faith, I am guilty. Then what are you going to do about it? What is the testimony in this case? Henry Youtsey, a convict in the walls of the penitentiary, Henry E. Youtsey, who was sworn on both sides of this case and both sides of the Howard case, Henry E. Youtsey, who first makes an affidavit that he did not know anything, and then comes up and swears from the witness-stand that he knows almost everything, Henry E. Youtsey, who deceived the jury and the country in his own trial by having a pretended "conniption" fit in the court-house during the progress of his trial, Henry E. Youtsey, who deceived Arthur Goebel when he told him that he let "Tallow Dick" Combs and Berry Howard into the private office of the secretary of state, now comes to this witness-stand to deceive you, in the hope of making life bearable in the penitentiary of this state, and finally of roaming over the inviting fields of freedom in payment for his infamy. Be not deceived about it.

It is the same Henry E. Youtsey, who is the only man who tried to give any reason why I went to Louisville on the thirtieth of January, and I was surprised, Mr. Hendrick, I was sorely disappointed and seriously surprised when you, a man who has been a candidate for the highest office within the gift of the people of the great state of Kentucky, said to this jury yesterday, in substance, that you indorsed Youtsey's conduct, when he had a "conniption" fit here in this court-house and kept the jury from rendering the verdict against him that they otherwise would have rendered. He said Youtsey was smarter than I; that Youtsey had a "conniption" fit and that I did not. No, I did not; no, I never shall. You can turn every stone of this land into a scaffold, every tree into a gallows, every home into a grave, and I shall yet be found here as long as my frail form stays above the green turf, fighting my case and maintaining my innocence; and if there is any blotch brought upon the fair name of the state of Kentucky by reason of these trials, that blotch will be written upon its pages by the pen of the prosecution. It has never been written, it will never be written by a pen of

mine or by my submitting and giving up and having "connip-tion" fits, when I know and the God above me knows, that I had no more to do with the killing of Senator Goebel than any man on this jury.

Are you going to believe Henry E. Youtsey, or are you going to believe these other men? Before you bring in a verdict of guilty in this case, what have you to do?

As I said, to start out with, if my trip to Louisville was in good faith, I am innocent, and if that trip was in bad faith, I am guilty. Then what are you going to do about it? You have Youtsey upon the one hand swearing that my trip to Louisville was in bad faith, and you have R. N. Miller, saying nothing of myself, and Walter Day, and W. J. Davidson, and Lon Butler, and Jim Frank Taylor, and E. U. Fordyce and E. Mentz and George W. Long and the two telegrams, testifying that my trip to Louisville was in good faith. What are you going to do about it? Are you going to say that George W. Long, ex-treasurer of state, swore to a lie beyond all reasonable doubt, when he said my trip to Louisville on the thirtieth of January was in good faith, when his testimony is not contradicted by a living witness in this case except Henry E. Youtsey, and by him only indirectly? Are you going to say that Lon Butler swore to a lie beyond a reasonable doubt when he said that my trip to Louisville was in good faith? Are you going to say that Walter Day, the ex-treasurer of your state under the Taylor administration, swore to a lie beyond a reasonable doubt when he said my trip to Louisville was in good faith? Are you going to do that, when the testimony of Long and the testimony of Butler and the testimony of Miller, and Mentz's testimony and the testimony of the two telegrams all sustain, uphold and corroborate each other? What are you going to do about it? Are you going to say that all these men swore to a lie beyond a reasonable doubt when their testimony is not contradicted by a living witness, except Henry Youtsey? Their testimony is not impeached, it is unimpeachable. Then what are you going to do about it? You have sworn that you would try this case according to the law and the testimony, and if the testimony has anything to do with it, there is but

one possible verdict and that is a verdict of not guilty. You have either got to say that ex-Treasurer of State George W. Long, Treasurer of State Walter R. Day, J. L. Butler, a trusted traveling man; ex-Superintendent of Public Instruction W. J. Davidson, ex-County Attorney R. N. Miller, Ed Mentz, Jim Frank Taylor and E. U. Fordyce, all worthy citizens of this state, and the two telegrams and myself, are all perjured scoundrels of the Commonwealth of Kentucky, when the testimony of all is unimpeached and is unimpeachable, and when they sustain and corroborate each other; or you have got to say that Henry E. Youtsey is a living embodiment of truth, honor, uprightness and integrity. You either have to do that or you are compelled to find a verdict of not guilty in this case. There is no escape from that conclusion.

Then if you try me by the law and the testimony, and you have sworn that you will so try me, I shall be given my liberty. There can be no escape from it.

My friend Wilson gave you an able dissertation on the testimony of Henry E. Youtsey. I can not spend much more time on it; but you take Youtsey's story itself, as to how the murder was committed, and on the very face of it, you are bound to say it is untrue. You are compelled to discover its falsity.

Colonel Campbell said that it did not matter now whether Howard or Youtsey killed Goebel, that I am guilty, if I can be criminally connected with either of them; that we can take whichever horn of the dilemma we like. But won't you admit, Colonel Campbell, that if Youtsey has lied against Howard that he is likely to lie against me?

Youtsey says that an unknown man came with a letter and knocked on his office door a few minutes before Goebel was shot and said, "My name is Howard." Youtsey testified that he said his name was Youtsey.

A lovely and attractive young lady, Miss Annie Weist, who was in an adjoining room to Youtsey's little office, said that none of these things occurred. Howard said that none of them occurred. Is Youtsey's word worth more with you than the sworn statements of Jim Howard and Miss Weist?

They had never seen each other before. Howard was a stranger in Frankfort. Nobody tells how Howard ever got from the Frankfort depot to Youtsey's office. It is a wonder that the prosecution didn't have some man like Cecil to say that he met Howard down at the depot and took him to Youtsey's office; but that is a link in the chain of testimony for the prosecution that is missing. Howard is virtually an unknown man in Frankfort and he goes to the door of an office in the Executive Building and knocks and a man opens the door, and he presents that man a letter. What do you think of it? They introduce themselves and they talk no further. They go to the glass door to the private office of the secretary of state. Youtsey goes around through the reception-room and admits Howard to my private office. Up to that time nothing is said by Howard about why he is down there. No conversation has ever taken place as to what the object of his mission is. What do you think of it? Youtsey says that he told Howard after he got into the room that the plan was to kill Mr. Goebel from the window.

Is it not a wonder that Howard did not ask him why he was placing him under the stairway, and what was the necessity for his going under the stairway if he saw anybody, and what was the reason for all that secrecy? Is it not a wonder that Howard did not say to Youtsey, "I've got a letter from Taylor saying for me to report to you. What does he want?" Taylor was certainly not fool enough to tell Howard in a letter that he wanted him to kill Goebel. Youtsey says that he did not tell Howard anything about what was wanted with him until he got him in the room, and then he told him that the plan was to kill Mr. Goebel as he came up on the sidewalk. What do you think of it? He says that Howard picked up the gun, and took his bearing, and everything was proper and that he was almost ready to pull the trigger before the thought struck Howard, "What am I to get for this?" What do you think of it? Youtsey said, "You can get anything you want." "I want a pardon for blowing down old George Baker," says Jim. "That is a mighty small thing to ask," says Youtsey. "That is all I want," says Jim. Think about it, men! Do you suppose Jim Howard is such

a fool as to come down to Frankfort and put himself into the office of the secretary of state and "blow down" the Democratic leader of the state for the purpose of getting a pardon for the "blowing down" of a man up in Clay County, when eleven of the jurymen on his second trial wanted to give him his liberty for avenging the assassination of his brother? Youtsey says that is all Howard wanted. Nothing is said about a pardon from Governor Taylor for the killing of Mr. Goebel. Nothing is said about that. And no application has ever been made for a pardon, so far as that is concerned, and none has been granted, if the testimony of the Commonwealth can be relied upon.

Do you believe Jim Howard would walk into "the most dangerous trap" he ever saw and "blow down" the Democratic leader of the state and get himself into a greater trouble than that he was already in up in Clay County, and want nothing for it, except to get out of the trouble in Clay? Do you think that reasonable? Howard said to Youtsey, so Youtsey says, "If any trouble comes of my killing Goebel we will exchange affidavits." Why the necessity of exchanging affidavits? Why didn't Youtsey say to Howard: "Never trouble yourself about affidavits. You have no use for an affidavit in this case. There is never going to be any trials in this matter. Governor Taylor is going to pardon us all." Why didn't Youtsey say that to Howard when Howard suggested the making of affidavits? My God, men, Howard down there in the commission of a crime ten-fold greater than the one he was charged with up in Clay County, and all he wanted was a pardon for the "blowing down" of George Baker up in Clay County! That is the only way that Youtsey could explain why he gave that affidavit that Howard was innocent. That is the explanation. Youtsey felt called on to say why he has given that affidavit. What else? Youtsey says that Howard laid out a number of big horse-pistols on the sill of the window and said: "When I shoot Mr. Goebel, I am going to fire a dozen shots from all these pistols and am going to make them believe there are a dozen men here." That is the way the prosecution has of explaining the additional shots. What could have been Howard's idea for

that? What could have been Howard's idea for calling attention to the place from which the fatal shot was fired by firing from his pistols four or five more shots? It is a silly proposition, a nonsensical proposition. Then you say, how were the shots fired? I say I don't know anything about it; but if the testimony of the prosecution can be relied upon, it looks very much as if Youtsey fired those pistol shots on the way to the basement of the Executive Building, after firing the shot which resulted in the death of Senator Goebel. George Barnes tells you that he smelled smoke in the hallway of the Executive Building. Smoke always goes up, never down. It might have come up the steps into the hallway of the Executive Building. The truth is that Youtsey did have a pistol in his hand when he came around through the basement into the governor's office. I say I do not know anything about these things, but reason dictates that it must have been that way.

Then there is another thing about Youtsey's story, that brands it as a falsehood. Youtsey says Howard recognized Goebel down at the gate and Youtsey says he ran out of the room. If Howard recognized Goebel at the gate, Howard knew Goebel and it was not necessary for Youtsey to stay in the room to point him out. If Youtsey did not fire the fatal shot himself, why is it, pray tell me, that he didn't step over into the auditor's office or into the reception-room and be with a number of individuals who could swear that he did not fire the shot that resulted in the death of Senator Goebel? Why didn't he do that if he didn't fire the fatal shot himself? Why is it that, after the fatal shot was fired, Youtsey says he became panic-stricken and ran down through the basement into the barber-shop and into the hands and presence of those who opposed him politically? What was the necessity for Youtsey to be scared if everybody in the Executive Building was implicated in the murder of Senator Goebel? Why did he run into the bosom of his foes instead of into the bosom of his friends? Why does he run so much from those in the Executive Building, if they are his friends, and if they indorsed the murder of Senator Goebel? Think about it, gentlemen.

What means all this talk about smokeless powder, if Howard fired out of the room a number of pistol shots, with ordinary black powder, as Youtsey says he did? Why was it necessary for Taylor, on the twenty-sixth of January, to dictate a letter to Youtsey to be sent to Jim Howard, some two hundred miles away, to come to Frankfort for the purpose of killing Goebel, when Hockersmith and Johnson and Youtsey were daily seeking an opportunity to kill Goebel, if Youtsey can be believed? Why the necessity of sending for Jim Howard to come and kill Goebel, if the whole State House Square was filled with desperate mountain assassins? That is what the prosecution claims, and yet out of all the bad mountain men in Frankfort, none was bad enough to kill Mr. Goebel, and Howard had to be sent for, if the prosecution can be relied upon. Why didn't Taylor send a messenger after Howard instead of sending a letter? That letter might speak in thunder tones against him some time. The reason why the letter idea was relied upon by the prosecution in preference to the messenger idea, is that the falsity of the messenger idea could be exposed. The messenger would have been compelled to ride on trains, stop at hotels and come into contact with people. But no such opportunity was given the defense to expose the letter idea. Many thousands of letters pass through the hands of the postal authorities daily. None of them could testify with any degree of accuracy, whether Taylor wrote to Howard on the twenty-sixth of January, or Howard wrote Taylor, or neither to the other. Youtsey said that he took the letter from Taylor to Howard down in short-hand and transcribed it and gave it to Taylor. He did not give his short-hand notes to Taylor. Where are his short-hand notes containing this letter? Why have they never been produced in court? The production of the short-hand notes would be evidence that the letter was written. Where are they? Echo answers, where?

Gentlemen of the jury, I would like to call your attention to a great many more things concerning Henry E. Youtsey, but I shall weary your patience with but a few more of them. I want to call your attention to this agreement, which was made down at Louisville between Henry E. Youtsey and

myself, and give you my reasons for doing that, and I ask you to put yourselves in my place and see what you would have done under like circumstances. Suppose, Mr. Booth, that the prosecution in this case had charged you with the murder of Mr. Goebel, as they have charged me, and that you were exactly in my place. Suppose that it had long been the contention of the prosecution that the shot which murdered Senator Goebel had been fired from your office, as they claim it was fired from mine. Suppose, as a matter of fact, that Henry E. Youtsey was seen to run down the stairway and through the basement immediately after the fatal shot was fired, and suppose it was the claim of the prosecution that you had given Henry E. Youtsey a key to the office for the purpose of having the murder committed from there. They had convicted you on two former trials on that plea. You had not done it, as it turns out now in this case; neither myself nor my brother gave Youtsey the key to enter that office on the thirtieth of January, if the prosecution can be relied upon; but, suppose they were pretending you had done that at the time you got the agreement from Youtsey, and had on former occasions asked that you be hanged for doing that very thing. Suppose it was a known fact that within a few hours after Youtsey had been arrested he had made a confession in the case which was false; that he had implicated innocent men; that he had told Arthur Goebel that Berry Howard and "Tallow Dick" Combs were in the room, and, relying upon the truth of his statements, Mr. Goebel was trying to get at the men who had killed his brother (and I don't blame him for that, and neither does anybody else); but suppose Youtsey had done that, and innocent men had been dragged into the matter by reason of Youtsey's lies.

Suppose, when your trial came up in 1900, that there were days and days that Youtsey was trying to make a deal with the Commonwealth's attorneys and the prosecution for immunity, if he would testify. Suppose that deal was almost consummated at one time. Suppose that, when Youtsey's own trial came up, instead of Youtsey testifying in his own behalf, he had "conniption" fits, and lay on a cot, apparently

unconscious, for days during his trial. Suppose all these things, and suppose that after he got down to Louisville he gave up his fight and said he was not going to carry his case any further. He had contended to you all the way through that he was innocent; that he knew nothing about the murder of Mr. Goebel; that he did not know anything about where the shot was fired from, or who fired it; that he did not know anything about it at all. Suppose he had made these statements to you, as he had made them to me, and after he got down to Louisville, he said: "I am going to give up my fight; I am going to the penitentiary for life. I am not guilty, but I am not going to risk my life any more." Suppose you knew that he was going down there into that living hell, the penitentiary of this state, and suppose you knew that the prosecution claimed that Youtsey was the key to the conspiracy and that he could unravel everything. Suppose you knew he could easily implicate you by saying he had got a key from you to get into your office. He didn't do it, and it turns out now that, as against me, he didn't do that. But how easily he could have said he did get it, and how dangerous to you such a statement would have been. Suppose you suggested to him: "Youtsey, you are going down to the penitentiary. In all probability they will make it pretty hard for you and I would like you to sign a statement which is true that you never had any connection with me so far as the killing of Mr. Goebel was concerned." Youtsey says: "All right, I will do it; I will sign the affidavit. I signed an affidavit for Jim Howard a few days ago and I am perfectly willing to sign yours. Go draw it up." And suppose you do go and draw it up and he says: "I don't believe I will sign it until I consult my attorneys, and whatever my attorneys say about it is all right." Suppose he writes up to L. J. Crawford, his half-brother, who defended him, and his half-brother knew all of his secrets, knew that he knew nothing against you, and his half-brother agreed that he could sign and swear to the affidavit and his half-brother sent it back to him for him to sign and after he got it back he says: "I won't sign that paper." Youtsey thinks in his mind: "I have been side-tracking the prosecution all the way through. I thought I had

them side-tracked before they arrested me, and I have side-tracked them into the prosecution of innocent men, Dick Combs and Berry Howard. I had a "conniption" fit and side-tracked the jury. I am as great an actor as Booth ever was. It may be that when I get to the penitentiary I may want to get out or get an easy job in there." Suppose he didn't know anything against you. You are innocent, but what would you do? Would you not try to get an affidavit from Youtsey exculpating you, even though he did not know anything against you, when most of the testimony against you was false statements of alleged conspirators, swearing for immunity? That is what I did, but he would not sign the affidavit unless I would agree that he (Youtsey) would waive the truth or falsity of what he was to swear to, and I refused to take it under those terms for a few days; I didn't want it that way; I wanted a clear-cut affidavit without the waiving of anything; but I could not get it; Youtsey would not give it to me, but he said, "If you will let me write that agreement here I will sign the affidavit," and he writes this agreement:

"This agreement, made and entered into this twenty-sixth day of January, 1901, by and between Caleb Powers, now under conviction as a conspirator, and Henry E. Youtsey, under conviction as a principal in the murder of Governor Goebel.

"Witnesseth, that for the purpose only of enabling the said Powers to clear himself of all connection with said murder, the said Youtsey agrees to, and does, sign and swear to the following affidavit, waiving its truth or falsity."

I do not waive anything. I do not agree to waive anything. Youtsey was the man who was waiving the truth or falsity of that affidavit, and not I. I thought it would be better for me to get an affidavit from Youtsey of that character than to get none at all. I may have made a mistake about it. All people in this world do make mistakes, but this was my notion about it: If Youtsey signed this affidavit and ever turned up in court to testify against me, as it was said by everybody that he would some time become a star-witness, I thought it better to have Youtsey swearing on both sides of the case. I could show if he ever did swear at any

time that I was guilty, that at another time he swore. I was innocent, and no jury can believe a man who swears on both sides of any case. That was my idea and those are the reasons why I took the affidavit under those conditions. I may have made a mistake. We are all short-sighted, weak, human beings, and all liable to err and I may have made that mistake, but I don't think I did. I did not think I was making a mistake then; I do not think it now. Youtsey is not the only man from whom I have got a statement, before he left the Georgetown jail for the penitentiary. Jim Jackson, Bob Bronhom, Riley, Binkley, Burley and many others have given me statements before leaving for the penitentiary, to the effect that I had not said anything in their presence while in jail even tending to show that I had the remotest knowledge of the killing of Goebel. I knew that these men were going to a living tomb and I did not know but what some of them might be induced to testify against me in the hope of getting out. I thought the same thing about Youtsey, and took his statement. I was guarding against possible perjury.

Now, a few more things in regard to Youtsey. Mr. Hendrick asserted that when Youtsey was at my office window with a gun on Saturday, January twenty-seventh, just after the Berry-VanMeter contest, I was trying to get Youtsey in a compromising position; that I was trying to manufacture evidence for myself; that I was a Dr. Jekyll and Mr. Hyde; that I did not care what testimony they had against Youtsey; that I expected to be able to say in the future, if I needed to say it, that I advised Youtsey against violence and bloodshed and all that kind of business; and that I went and got McKenzie Todd to talk to Youtsey, not for the purpose of preventing Youtsey from doing violence, but for the purpose of manufacturing testimony for myself. Why, if the assertions of these gentlemen can be relied upon, I was the last man in all the world to need testimony, because it is their contention that the killing of Mr. Goebel was going to settle the contests and give the Republicans their offices. If that contention upon the part of the prosecution is true, I am the last man in all the state of Kentucky to need testimony. And from another standpoint, do you think I would

go into the thing if I thought I would need testimony or that I was ever going to be called up in court about it? If I was ever going to be called up in court about it I would lose my office, the very thing for which I was contending, and for the purpose of holding which, these gentlemen allege, I entered into a conspiracy to murder Goebel. They say I was acting a double part when I went to my office, where I had a right to go, and where duty called me. I happened to find Youtsey in there. He was there without my permission or authority, if his own testimony can be believed. I said to him: "What are you doing at that window with a gun?" What ought I to have said to him? And when he didn't give me the satisfaction I demanded, I went to get somebody to talk to him. I found Todd. Counsel for the prosecution says I ought to have kicked him out of my office. I answer it has never been my custom in life to try to control men by brute force, and I simply went and got Mack Todd to talk to him and he did go in and talk to him.

Why, if it were a conspiracy for Henry Youtsey to be at my window with a gun, was it not another conspiracy for him to have been at another office window with a gun? If it was a conspiracy on my part to happen to see Henry Youtsey at my private office window with a gun, why was it not a conspiracy on the part of Mack Todd and George Hemphill and these other people who happened to see Youtsey at another office window with a gun? Is it more of a crime on my part to have seen him at one window with a gun than it was for Todd and Day and Stone and Hemphill and others to have happened to see him at another window with a gun? None of these men ever went and got anybody to talk to Youtsey in order that he might be dissuaded from his rashness. None of them has ever been charged with the murder of Senator Goebel, or with procuring Youtsey to kill Senator Goebel. I did get McKenzie Todd to dissuade Youtsey from indiscreet conduct. Colonel Hendrick, in trying to convince the jury and the country that I am guilty, said: "If Powers is not guilty, why was he indicted? Nobody has heard of Mr. Day, John S. Sweeney, Clifton J. Pratt, John Burke and other state officials, who were on the same ticket

with Powers, being indicted." Yes; that is true, and it is further true that Youtsey was the private stenographer of John S. Sweeney and got out of the vault of his office the rifle with which Goebel is alleged to have been killed. It is further true that Youtsey, from a desk in the auditor's office, was ordering smokeless powder cartridges and having talks with Dr. Johnson and entering into conspiracies with the negro, Hockersmith, to kill Goebel, and saying to Day that if he had three hundred dollars he could settle the contest. Nobody ever heard of Mr. Sweeney advising with Youtsey. Youtsey said to John Ricketts in the office of Lucas Moore, commissioner of agriculture, that his job depended on Goebel's death. It was there where Youtsey said to Cul-ton that he had the slickest scheme yet to kill Goebel. It was there where all the guns were stacked. Nobody has ever heard of Lucas Moore's being charged with the murder of Mr. Goebel. Nobody has ever heard of Sweeney, or Pratt, or Burke, or Throckmorton, or Day, or any of the rest of the state officials trying to put on foot a plan to ferret out the Goebel murder. I did that. Does that make me more guilty than they? None of them ever employed J. B. Matthews and sent him to see Miss Weist, who was in an adjoining room when the murder occurred, to see what she knew about his condition. I did that. Does that make me more guilty than they? None of them went to John and William Sweeney, Jr., and Grant Roberts, who were employed in the same office with Youtsey, and who were likely to know of his conduct and actions, and say to them: "Youtsey's actions have been suspicious. I think the guilty ones connected with the murder of Mr. Goebel should be exposed." I did that. Is such conduct as that proof of my guilt, and proof of their innocence? None of them ever said to J. B. Matthews and McKenzie Todd and others, that he felt that a full and complete investigation should be made of Goebel's murder. I did that. Does that make me more guilty than they? None of them ever called in Detective Griffin, of Somerset, Kentucky, at the instance of J. B. Matthews and George Hemphill, and put him to work on the case, under the assurance that he was an honest detective and would let the facts

remain as he found them. I did that. Is that proof of my guilt? None of them tried to get the Louisville defense committee, through counsel, to set apart a portion of that money to pay detectives to unearth the murderer of Mr. Goebel. I did that. Is that a circumstance against me? None of them, failing in that, said to Detective T. R. Griffin, to go ahead with the work, expose the guilty, if he could, and get his pay from the reward commission. I did that. Will you find me guilty for doing that?

None of them ever sent J. B. Matthews to Indianapolis to see Charles Finley and ask if he knew anything about the two missing keys to the glass door of the private office of the secretary of state, that they might know whether or not they were used in connection with Goebel's murder. I did that. None of them ever went to Governor W. O. Bradley and Judge Yost and said to them, "We have been investigating the Goebel murder," and that they believed they would go and lay before Mr. Franklin, the Commonwealth's attorney, all the facts in their possession, to the end that the guilty might be exposed and apprehended. I did that. And yet Colonel Hendrick asked: "Why did they charge me with the Goebel murder and did not charge the other state officials?" I am sure that none of the state officials he named had the remotest connection with Goebel's murder, but none of them is more innocent than I. So far as the testimony appears, McKenzie Todd and myself are the only ones who tried to dissuade Youtsey from his rashness before Goebel was killed, and Todd did that on two occasions at my instance, once on the Saturday before Goebel was killed, when Youtsey was in my private office with a gun, and once on the Monday morning before the killing, in the hallway of the Executive Building. Both McKenzie Todd and myself testified to these things. No Republican official at Frankfort, as far as the testimony appears, spent his means in trying to expose Goebel's murderers. I did that, and yet they say I am guilty. If every man should be indicted before whom Youtsey did an indiscreet act, why don't you indict Walter Day, McKenzie Todd, George Hemphill, S. B. Stone, R. N. Miller, John Ricketts, Grant Roberts, Frank Johnson and many others?

Whatever I do, and wherever I go, and whatever I say, these men construe the act against me. If I go up the road, they say I ought to have gone down. If I say one thing, they say I ought to have said another. If I do one thing, they say I ought to have done another. They say when Burton was in my office at that meeting, making an incendiary speech, that I called him down and said if violence is to be contemplated, and if this meeting has for its object the murder of anybody, I propose to withdraw from this meeting and have nothing further to do with it. Colonel Hendrick, in his argument for the prosecution, says: "The idea of Powers' saying that he would withdraw and have nothing further to do with the meeting! The idea of Powers' resigning his office! The idea of Powers' going home!" He says it is a ridiculous proposition. What if I had done anything else on that occasion than what I did? What if I had come to the conclusion that the meeting was being held in my office and that the people who were assembled in that office occupied the relations of one's guests and that I, therefore, should say nothing, even if they were indiscreet, what would the prosecution have said in that instance? They would have said that I indorsed Burton's conduct by not getting up and saying that I would not stand for anything of that kind. What if I had sat quietly by and said nothing? They would have said that I indorsed every word that Burton said, and rejoiced at it in my heart. When I did call him down; when I did tell him that I did not propose to be a party to such a thing as that, these men say that I was acting a double part and that I didn't mean it. It is be damned if you do, and be damned if you don't. Whatever road I take, wherever I go, these men say I am acting a double part. Mr. Hendrick said that because I testified on the witness-stand with calmness and deliberation I was swearing to lies. What if I had testified in any other way? What if I had been darting and scouring over that platform and jumping at every proposition? They would have said: "Of course he is guilty." Whatever I do, they ask you to find me guilty for it. Down in Louisville, when I am alleged to have said to Golden: "I have made a mistake in coming down here; let us go back

to Frankfort on the first train—that was the thirtieth of January—they say I said that because I had made a mistake in leaving Frankfort the day that Senator Goebel was killed, and that the thing to do was to return to Frankfort on the first train. What if I had remained in Louisville, what would they have said? They would have said: “He was afraid to go back where the bloodshed, assassination and murder had been done in his absence.” They say I am guilty because I left my office on the morning before Senator Goebel was killed and doubly guilty because I returned to it after he was killed. So, whatever I do, they ask you to convict me for it. After the shooting was over I began to make investigations as to who fired the shot that resulted in the death of Senator Goebel, but I believe I am not permitted to speak as to that, because the prosecution objected to that evidence and it was sustained.

When Grant Roberts was put on the witness-stand and the question was put to Roberts: “Is it not true that you had a talk with Caleb Powers in his office after Senator Goebel was killed, and is it not true that he said to you on that occasion: ‘They are claiming this shot came from my office; I am satisfied it did not, but I want you to make all the investigation in your power to unearth the guilty and to uncover the truth?’” and there came from the side of the prosecution a chorus of objections to Grant Roberts’ answering that question. Why did they object to my showing I did what I could, lent all the assistance I could, to unearth Goebel’s murderer? Mr. Hendrick said yesterday that I had talked with Governor Bradley and Judge Yost about it. I did have a talk with Governor Bradley and Judge Yost about going to Mr. Franklin and laying before him all the facts I had found out with reference to the killing of Mr. Goebel. They say I was acting a double part; that I was trying to take suspicion from myself, and when Mack Todd was put upon the witness-stand and asked this question: “Todd, did you have any conversation with this defendant, after Mr. Goebel had been killed, in the hallway of the Executive Building, and did he say to you upon that occasion that they were claiming the shot came from his office, and that he wanted you to do all in your

power to ascertain the truth of it; that so far as he was concerned, he had nothing to fear, and that he wanted a full investigation of the affair?" There came a chorus of objections from the side of the prosecution. Why object? why do they keep it from you, that I did whatever I could to unearth the murderer of Senator Goebel, and that I employed Matthews to help run the murderer down? Why object to my exposing the guilty? If I had been implicated with Youtsey, I certainly would not have been trying to expose his guilt, because, in that event, I would be exposing my own guilt. Cecil said that on Monday night, before Goebel was killed, I said that there was a fellow across the hall (meaning Youtsey) who wanted to kill Goebel the other day, and that I would not let him do it, because I was afraid to trust him. Youtsey said that I was telling him on the morning of the same day that I was not afraid to trust him, and was planning with him to have the shot fired from that office. Cecil testified that I was alone when I said that to him. Youtsey testified that I was alone when I said that to him. The testimony of the one contradicts the other.

Cecil is under indictment, and is swearing for immunity. Youtsey is in the penitentiary of this state, and is trying to swear his way to liberty. The law challenges the testimony of them both, and says that it can not be believed unless it is corroborated. They contradict each other. McKenzie Todd, who was formerly a witness for the prosecution, told you that both he and I were trying to prevent Youtsey from doing acts of violence the Saturday before Goebel was killed, and that on the same Monday morning, when Youtsey says I was indorsing murder, when I was alone with him, Todd tells you that both he and I were advising Youtsey against rashness, and that he did it at my instance. The testimony is that I happened to meet Youtsey in the hallway that morning, and that he wanted to enter my office, and remembering what his conduct had been on the Saturday before, I went and got Todd to talk to him again. Todd knew him well. These were the only occasions I ever came in contact with Youtsey, except when I took the oath of office on the first of January, 1900. I scarcely knew Youtsey. If Youtsey can

be believed, he is the man who was seeking Goebel's death, not I. It was Youtsey, with Dr. Johnson, who first talked of the murder of Mr. Goebel. It was Youtsey who said that Johnson wanted to kill him from the very start, and that the start was when Johnson came before Youtsey to be sworn to an affidavit. It was Youtsey, with Johnson, who searched through a vacant room on the second floor of the Executive Building, hunting a place from which to kill Goebel. It was Youtsey, with Dr. Johnson, who examined the hallway windows and doors of the Executive Building in search of a suitable place from which to fire the shot. It was Youtsey, with Johnson, who examined the private office of the secretary of state, when I was in the mountains of Kentucky, with the view of firing the shot from there. It was Youtsey, with Johnson, who decided that that office was the place from which to fire the shot. It was Youtsey who ordered smokeless powder cartridges from Cincinnati, with which to kill Goebel, on the twenty-second of January, when I was in the mountains of Kentucky. It was Youtsey who told Johnson that the cartridges go with the gun, after he had received them from Powell, Clements and Company, of Cincinnati. It was Youtsey who stole a Marlin gun belonging to Grant Roberts from the vault in the auditor's office, and carried it into his own little office, preparatory to killing Mr. Goebel. It was Youtsey who carried that gun into my private office, when I was in the mountains of Kentucky, trying to get men to come to Frankfort as witnesses before the contest boards. It was Youtsey who placed Johnson in that office in my absence, and tried to kill Senator Goebel. It was Youtsey, with Johnson, who mapped out how the assassin should escape from that office after the shot was fired. It was Youtsey, with Johnson, who planned that he should run down the stairs and through the basement and around and back into the hallway of the Executive Building. It was Youtsey who ran that route, following the firing of the fatal shot. It was Youtsey, with Johnson, who told Culton that he had the slickest scheme yet by which *he* could kill Senator Goebel; that *he* could kill him from the office of the secretary of state and escape through the base-

ment. It was Youtsey, with Johnson, who discussed a plan to kill Senator Goebel in his room at the Capital Hotel with nitroglycerin. It was Youtsey who would have favored that but for the fact that his wife had some relatives boarding at the hotel. It was Youtsey who sought the negro Hockersmith to kill Goebel, after his and Johnson's plans had failed. It was Youtsey who took Hockersmith into his private office and sought his services to kill Senator Goebel. It was Youtsey who took Hockersmith into the private office of the secretary of state with a view to having Goebel killed from there, and in my absence. It was Youtsey who showed Hockersmith the gun and cartridges he had prepared with which to kill Goebel. It was Youtsey who was disappointed when Hockersmith failed to kill him. It was Youtsey who then set about trying to get some one else to do it. It was Youtsey who told John Ricketts that his job depended on Goebel's being killed and Taylor's holding his seat. It was Youtsey who said that he had one hundred dollars to put up to that end. It was Youtsey who told Walter Day that if he had three hundred dollars he could settle the contest. It was Youtsey who made the proposition to some of the mountain men at Frankfort to kill Goebel. It was Youtsey who dreamed that he saw some of the mountain men kill Goebel. It was Youtsey who had the killing of Goebel so much on his mind that he even dreamed about it at night. It was Youtsey who said that Howard knocked on Youtsey's private office door on the morning of the thirtieth, but Miss Weist, a beautiful and attractive young woman who occupied an adjoining room to Youtsey's, said that did not occur; that the door between her office and Youtsey's was open on that morning and that Youtsey was not in that office at all that morning, and that no one knocked on his office door. It was Youtsey who had advised the young lady to leave her office a few days before, because he said that trouble was going to come up. It was Youtsey who had his gun with him on that occasion. It was Youtsey who was sitting both at the reception-room window and at the window in the private office of the secretary of state with the window hoisted, the blinds pulled down and a Marlin gun across his lap. It was

Youtsey who said to Culton about the middle of January that he had a slick scheme to kill Goebel from the private office of the secretary of state; *that he had a key that would unlock the door of that office and that he could get in there any time he wanted to, by means of that key. It was Youtsey who said that he did not get that key from either myself or my brother.* It was Youtsey who said that he never did get any key from me, and that he never tried to get any key from my brother until the twenty-ninth day of January, the day before Goebel was killed. It is Youtsey who says that he never did get the right key from my brother; that the one he got on the twenty-ninth of January failed to unlock the door.

It was Youtsey who ran, panic-stricken, down the stairway and through the basement after Goebel was killed. It was Youtsey who said to S. S. Shepherd that if he had his way the contest would soon be settled. It was Youtsey who said that everybody was kicking on his killing Goebel, and that he would have to drop it. It was Youtsey who wanted an alibi after Goebel was killed. It was Youtsey who asked Culton if he could not place him up in the lobby of the Legislature with Culton and swear that he was up there when Goebel was shot. It was Youtsey who refused to tell Frank Johnson where he was when Goebel was shot. It was Youtsey who wanted to send Grant Roberts twenty dollars for his gun after Goebel was killed. It was Youtsey who tried to buy John Mastin's gun before Goebel was killed, and intending to use it for the purpose of killing Goebel.

It was Youtsey who began making confessions six hours after he was arrested. It was Youtsey who told Arthur Goebel that he had let Dick Combs and Berry Howard into the private office of the secretary of state just before Goebel was shot. It was Youtsey who says he lied when he did this. but that he did it in order not to harass Mr. Arthur Goebel's mind. It was Youtsey who, by lying to Arthur Goebel, had Berry Howard and Dick Combs arrested and indicted on the charge of killing Senator Goebel. It was Youtsey who permitted Dick Combs to be dragged from jail to jail and to lie behind prison bars for many months. It was Youtsey

who let Berry Howard be put upon trial for his life, and never breathed a word to the prosecution that Berry Howard was an innocent man and that he had lied when he told Arthur Goebel that Berry Howard was in the private office just before the shooting.

It was Youtsey who had "conniption" fits when put upon trial for his life. It was Youtsey who said that he did that for the purpose of deceiving the court, the jury and the country. It was Youtsey who said that, as a matter of fact, he had no fit, but thought it was the best thing to do under the circumstances. It was Youtsey who lay upon a cot during the most of his own trial, apparently unconscious of what was going on about him. It was Youtsey who always maintained to his own dear wife that he was innocent of the crime charged against him. It was Youtsey who refused to appeal his case, and went to the penitentiary for life. It was Youtsey who made an affidavit before he went to the penitentiary that he did not know and had not seen Jim Howard until long after Goebel had been killed, and now swears he swore a lie upon that occasion. It was Youtsey who made an affidavit before he went to the penitentiary to the effect that he knew no circumstance, even remotely, to connect me with the killing of Senator Goebel. It is Youtsey who says that when he swore to that he swore to a lie. It was Youtsey who said that anybody would swear to a lie when he got into trouble and was trying to get out. It was Youtsey who was kept on bread and water for eight consecutive Sundays in the penitentiary of this state before he became a witness in these cases. It was Youtsey who was put to firing a furnace in the hot days of July and August before he ever testified for the Commonwealth. It was Youtsey who testified that the warden of the penitentiary and others advised him to tell what he knew. It was Youtsey who wrote out a statement of what he said he knew and sent it to Judge Cantrill. It was Youtsey who burned that statement, together with his short-hand notes of it, when it was returned to him, because it was not satisfactory.

It was, in all probability, Youtsey who failed to implicate me in that statement. It was Youtsey who told Colonel

Campbell in a statement a few hours after he was arrested that *he never discussed with me the killing of Goebel from my office*. It is Youtsey who now says he lied about that. It is Youtsey who says that I agreed to leave my office door open for the purpose of letting murder be committed from there. It is Youtsey who says that the door leading from the reception-room into my office was open on the morning of the thirtieth of January, before Goebel was killed. It is Youtsey who is contradicted in that by Ben Rowe, the janitor; R. N. Miller, a clerk in the reception-room; Grant Roberts, the brother of an able newspaper editor of this state; J. M. Hardgrove, who was in the reception-room and saw some one try to enter my private office thirty or forty minutes before Goebel was shot, but failed. It is Youtsey who contradicts Golden, who says he saw me lock that door from the inside and bolt it before leaving for Louisville on the morning of the thirtieth. It is Youtsey who is contradicted by Jim Howard, who says Youtsey did not let him into the private office on that day, and lastly, Youtsey is contradicted by my own testimony.

It is Youtsey who is the alleged key to the alleged conspiracy. It is Youtsey who failed to tell us when and where the conspiracy was entered into to kill Goebel and who were present. It is Youtsey who connects nobody with the alleged conspiracy, except as he talked with them *alone*. It is Youtsey who had an alleged *private* talk with my brother, and a man unknown to Youtsey, about the alleged wrong key to my office. It is Youtsey who had an alleged *private* talk with Jim Howard, a man unknown to Youtsey, about killing Senator Goebel. It is Youtsey who had an alleged *private* talk with W. J. Davidson about getting into my office. It is Youtsey who meets this one here and that one there and has a *private* talk with them and connects them with the murder of Mr. Goebel. *It is Youtsey who said he knew nothing incriminating against Charles Finley, although Finley has loudly and long been denounced as a conspirator*. It is Youtsey who had but one talk with me about the murder of Mr. Goebel, and that was the day before Goebel was killed, if Youtsey's own testimony can be believed. It is Youtsey

who says he had that talk with me when I was *alone*, and in that talk with him when I was *alone* I agreed to be away from my office. It is Youtsey who says that I left my office on the morning of the thirtieth of January for the purpose of permitting murder to be committed from there. It is Youtsey who is contradicted in this by R. N. Miller, George W. Long, ex-state treasurer; Walter Day, another ex-state treasurer; J. Lon Butler, a trusted traveling salesman for a large wholesale house in Baltimore; E. U. Fordyce, Jim Frank Taylor and Ed Mentz, all reputable men, and also myself. It is Youtsey who said that I was away from my office for a sinister purpose, while all these other men say that my trip to Louisville on that day was for the purpose of getting up another crowd of petitioners to come, mostly from Western Kentucky, to petition the Legislature.

Is there a man on this jury who believes that I had the remotest connection with Henry E. Youtsey in so far as the killing of Senator Goebel was concerned? If there be one, let me bring this matter home to you by an illustration. Suppose, Mr. Layson, when you were coming down the streets of Georgetown—coming here to serve on this jury—that you saw a young man sitting in front of one of these saloons here, and he asked you to get him a drink. You knew nothing of the young man; you had seen him around town here once or twice in your life.

You did not know where his parents lived; you knew nothing of him or about him; he stopped you on the street and said to you: "Mr. Layson, I want a drink of whisky. I want you to go in and buy it for me, or loan me the money with which I can buy it. I am dying of thirst; I have got no money and no friends here; but for the sake of my burning appetite and for me, I want you to loan me just one dime to get a drink;" and you say to him: "Young man, I can not do it. To begin with, it is a violation of the law for me to loan you any money for such a purpose. And if I could loan it to you, without any infraction of the law of this town, I would not do it. You are a young man; upon the young men of this state and this union depend its perpetuity and its progress. I never started any boy on the road

to ruin; I can not start you. Young man, listen to the advice of an older head. Liquor contaminates everything that it touches. It unfits you for business; it degrades your manhood, undermines your vigor and lays waste your energies; it saps your vitality and loses for you the respect and confidence of your neighbors and friends; it breaks your mother's heart and blots out your attachment for home; it ruins your hopes and prospects for a bright and happy life; it hastens your father to a sad and immature grave; it brings tears down the cheeks of mothers and floods their hearts with misery and woe. Young man, you should not ask me to aid such an infamous cause; I can not do it. I have some respect for my country's honor. Dearth and desolation are found in the wake of whisky's course. It covers the land with misery and crime. It will curse your existence here on earth and finally land you in hell. Young man, I can not do it."

And, Mr. Booth here, who was with you coming down the streets, has stopped to wait for you. You go on to him thinking about the request of the young man. It strikes you that it would be a good idea for him to go back and talk to that fellow. He is about to do that which will take him on the road to ruin and make him a curse to the country that he calls his home and a disgrace and a dishonor to the state we all love. You wish that he would go and talk to him. Mr. Booth goes. He is actuated by the same feelings that actuated you. He enters into conversation with the boy. He says that it will never do to drink; that it has slain too many reputations; that it has brought shame and despair and misery and want to too many homes; that it has been the father of too many crimes; that it does not stop at the havoc and ruin of the poor, but, like a vile and slimy serpent, it crawls across the threshold of our fairest homes and leaves its desolation and ruin there. It creeps into our courts and defiles the streams of justice; it invites famine and courts disaster. It won't do to drink, young man. And about that time, Mr. Layson, you have gone back to where your neighbor has been talking to the young man. You hear him say that it will never do to drink, and emphasize what you

have said before you again repeat, "That is right, young man, it will never do to drink." Time passes on; you are detained here in court. You have been chosen to serve on this jury; you are here performing the obligations of citizenship. And after this trial is over; after these long days of waiting and suspense are at an end, with a consciousness of duty well performed; with the thought in your mind that this day's work, whatever your neighbors may temporarily think about it, will stand the test of time and vindicate your actions, and with the thought in your breast that if you have erred at all, it has been on the side of mercy and humanity, you go forth from this jury-box and again be given your liberty and have the privilege to mix and mingle with your fellow men without restraint and take your place again in the active battles of life, assuming its cares and sharing its burdens.

Suppose, as you are leaving this town, you come across this young man on the street and he again asks you for more whisky or the money with which to purchase it. You are wanting to get to your home. You do not tarry long with him; you have given him advice before, but you feel as if you owe it to your country to advise him again. You again ask Mr. Booth to advise with him, as he is better acquainted with him than you. And you say to Mr. Booth: "I wish you would go and talk to that young man again; he is yet wanting whisky." And you go and talk to him, Mr. Booth, and the young man says that is all right. "Then I will not drink if it is going to ruin me; I will let it alone." You gentlemen pass on to your homes. You think no more about the young man. Your mind and time are occupied with other matters. Weeks pass, and suddenly, Mr. Layson, the sheriff of your county comes with a warrant for your arrest. Maybe you say you will give yourself up as did Jim Howard. Maybe you say that the courts and politics and money and prejudice and everything else is against you, and that you will stand no show to get a fair trial, and that you decide not to go. The sheriff arrests you on a warrant charging you with furnishing money to the young man, and lodges you in jail. You are carried before the courts for trial. You find the sentiment of the people is greatly aroused

because of your alleged offense. They hate liquor in all its forms, and try to prevent it from contaminating the lives of the youths of the country. It is a fact that the young man got drunk soon after you came in contact with him. They charge you with furnishing him the money to get drunk. You were seen talking with him a while before he did get drunk.

The country says that any man who will strike a fatal blow at the very foundation of society and our homes by giving our youths whisky shall be severely dealt with. The newspapers of the state jump on you as soon as you are arrested. The politicians of the country, seeing an opportunity to ride into office on the indignation of the people by denouncing you, have been proclaiming your infamy from every cross-roads in the land. Your case is called for trial. You are a liquor man. You find that you are to be tried exclusively by Prohibitionists. The judge is a strong Prohibitionist. The prosecuting attorney and officers of the court are opposed to your liquor views, and the whole country has been taught to hate you, not because of what you have committed, but because of what you are alleged to have committed. Your trial begins. The prosecution puts the young man on the witness-stand. He testifies that you had a *private* talk with him as you came here to Georgetown, and that while you did not exactly loan him the money with which to get the whisky, you left the saloon door open and told him to help himself, and that he did enter the saloon, at your instance, and got drunk. This closes the case against you. It is your time now to be heard. You put Mr. Booth on the stand and he testifies that as you and he came to town to serve as jurors in this case you did have a talk with this young man on the streets of Georgetown, and that after you had a talk with him you did come to him and ask him to also have a talk with the young man.

Mr. Booth testifies that he did go, in pursuance to your advice, and have a talk with the young man, and that he advised him not to drink whisky. He testified further that while he was talking with him you, Mr. Layson, did come up and enter into conversation between the young

man and him, and that you did say to the young man it will never do to drink. This is the testimony of Mr. Booth. He testified further that after your services as jurors were over, in this case, both of you started to your homes and you both again came in contact with this same young man. Mr. Booth testified that you came to him again and asked him to go and talk to this young man and advise him not to drink, and he testifies further that the young man promised him he would not drink.

You go on the stand, Mr. Layson, in your own behalf, and you testify substantially to what Mr. Booth testified to; you say that the young man did want to borrow from you some money to buy whisky and that you did not loan it to him, nor did you tell him to go into the saloon and get it. You tell the jury, under your oath, that you did call Mr. Booth to come and talk to the young man and advise him not to drink. You say to this jury that you felt that you were doing your Christian duty and your duty as a citizen. You tell the jury that you both passed on and left the young man, and came on to this court and were detained here as a juror to try this case, and that when the trial was over and you were discharged from jury service you again advised him not to drink. You testify further that you again called on Mr. Booth to talk to this young man and advise him to abstain from the use of all intoxicants. You say further that it is true you are a farmer and raise corn and rye to sell, and you testify that it is further true the more whisky there is consumed the higher will be the price of your corn and rye, but that you were advising the young man in good faith not to drink. You testify further that you are a citizen of this county, and that you wanted it to be pure in morals, true in religion, lofty in its ideals of right and wrong. You testified that you would not, under any state of case, attempt to undermine the foundation stones of society and of your country for the paltry sum of a few dollars and cents, and you would not, Mr. Layson. This closes the case for the defense.

The attorneys for the prosecution address the jury against you. They allege that if you did advise the young man not

to drink or go into saloons you did not mean it; that you had corn and rye; that the more whisky there is consumed, the greater will be the price of your corn and rye, and that is the thing in which you are interested. The testimony of the attorneys, Mr. Layson, is the only thing against you, and when the speeches are all over the jury retires to the jury-room here. They are not in there long enough to read the indictment until a tap is heard on the door. They enter and a verdict comes: "We, the jury, find the defendant guilty and fix his punishment at hard labor for the period of his natural life in the penitentiary of this state."

My God, Mr. Layson! What emotions would fill your breast when you heard the verdict read,—read by your fellow men; read by twelve citizens of your own state, and that, too, Mr. Layson, when you know you were innocent of the charge; when you know you did all that was required of you as a citizen to your country, and gave the young man the very best advice known to your head or heart. You did more; you called your neighbor and had him advise him. You not only did what the morals of your country require, but you went further; you did more than that. You fulfilled the biblical injunction, that if your brother errs, or is about to err, to put him in the right; and for that fatherly and country-saving advice you have been branded as an enemy to your country and as a foe to mankind; as a dangerous element to our citizenship. What would you think of a state that would so mistreat you? When perils come to our country, when our flag is endangered, the country calls upon you to defend it; neither your property nor your life is spared in its defense, and when peril comes to you, Mr. Layson, as in this case I have supposed, instead of the state and country using its strong arm to defend you, it uses all its resources to oppress you. What would you think of it, Mr. Layson? The country that will not defend its defenders is a disgrace to the world, and its flag a filthy rag that befouls the air through which it waves.

I ask you, Mr. Layson, how does your conduct differ in the case I have supposed from mine in dealing with Henry Youtsey? I saw the young man in my office. I do not know

how he came there. He was in the reception-room without authority or permission from any one, as far as I know, and as far as has been proven in this case. If he would go to one place without permission, he would go to another without permission. He did get there without permission. That testimony is not contradicted by any testimony on the part of the prosecution. I saw him in the office with a gun. I went into my office; I had a right to go; I went where my duty called me. I found him there. He had a gun. I asked him what he was doing with it. What should I have asked him? And when he did not give me the satisfaction I demanded, I went to get some one to talk to him who was better acquainted with him than I was. I advised him for the best, as you did the young man, Mr. Layson, who wanted the money to buy whisky. I gave him the best advice I had. So did you in the case I have supposed. I could have talked to him myself and have let him go his way. So could you with the young man who wanted the whisky. You thought it best to have some one else to talk to him, and you did have it done. If you had advised the young man to get drunk and had loaned him the money for that purpose, the prosecuting officer would have said: "Of course he is guilty. He says he loaned him the money for that purpose." And when you show that you not only did not loan him the money, but advised him not to drink, and prove it by Mr. Booth, then they say you are playing a double part; that you did not mean it. It is be damned if you do and be damned if you don't. And with me it is be damned if you do and be damned if you don't.

Gentlemen, I am a citizen of this state, and I should be treated as such, whether I am a Republican or a Democrat. Whether I was born in the hills or in the plains, I am entitled to justice at the hands of my fellow citizens. I am a citizen of this country, and citizenship means that a man should be obedient to the law and have due regard for the rights of others, promote the welfare and well-being of our neighbors and in times of peril give our property and our lives for our country. Citizenship means more than that, gentlemen; it means that this country shall protect us

in all the rights of citizenship, which the constitution of this country guarantees to us. It would be a poor country, indeed, that has the right to demand of its citizens their property and their lives in times of its own perils, and when perils come to one of its own citizens, turns its back upon him, and even lends a hand in his oppression. I am entitled to a fair trial, gentlemen; I am entitled to justice at your hands.

If testimony can be believed; if reason can be relied upon, I was not in a conspiracy with Henry E. Youtsey. Then, gentlemen, I am not guilty of that with which I am charged. I did not know Holland Whittaker; I did not procure him to murder Mr. Goebel. I did not know Dick Combs; I could not have procured him to murder Mr. Goebel. I did not know Jim Howard; I had no communication with him; I, therefore, could not have procured him to kill Mr. Goebel. The unknown man is no more; as an actual quantity, he is no more. The prosecution, by their present theory, has eliminated the unknown man from this case. I, therefore, did not conspire with, or procure, any unknown man to kill Mr. Goebel.

Then, men, how can I be guilty under this indictment? How can you find me guilty? You can not; you will not. With all the testimony of all the star-witnesses swearing for money and immunity, there is no testimony against me in this case, except circumstantial testimony, that sort of testimony that often lies, and is always unreliable. Colonel Campbell said in his opening argument that so far as he is individually concerned, he would as soon convict me on circumstantial testimony as on any other kind of testimony. Why, the whole world knows that circumstantial testimony is the most dangerous and the most unreliable sort of testimony that can be introduced in a court of justice.

Let me illustrate the uncertainty and unreliability of circumstantial testimony by a story I read once. The story is like this: A few years ago, up in a Vermont town, in Chittenden County, there happened a very strange case. There lived in the suburbs of the quiet little village a rich old bachelor. He had devoted his life to the making of money and had retired from an active business life to enjoy it in his

own way. It was in everybody's mouth that he kept close about him, in his costly mansion, a vast deal of money. He kept within his palatial dwelling but one negro servant to attend his wants and needs. There they lived in solitude. It was after midnight on one cold and bleak November day that the neighbors were aroused by the firing of pistols in the costly mansion. Fearing foul play, they rushed to the scene of the tragedy, for such it was. They found every window in the house locked and the doors barred and bolted. They heard groans on the inside of the house. They knew the trouble was within. They broke down the front door and entered. They swept across the spacious hallway and rushed up to the second floor of the building to find, in the room always occupied by the old man, a sad scene. The white hairs of the old man were weltering in his own blood. His brains bespattered the floor, the walls and windows of his own room. A bullet had entered his forehead; he was dead and his pistol lay grasped in his right hand. It had been discharged in the affray; it was pointed towards the door of his own room. Nearer the door of his room lay his colored servant, shot in face and head. It was found that the bullet hole in the head of the colored servant was exactly of the same caliber as that of the pistol fired by the master. This helped to confirm the story, if it needed confirmation, that the servant was shot by his master while attempting to rob him. The negro was not dead, but paralyzed by the blow. He was moaning and muttering inaudible sounds. His master's watch and jewelry lay near his hands, and a pistol that had been discharged twice lay near him to help tell the story of the old man's murder. It was several days before the negro was able to talk. During that time, public opinion had been formed. The negro's insensibility prevented him from being mobbed without judge or jury. Everybody said he had tried to rob his master and in the attempt had killed him. There was no other explanation of it. They were the only two in the house. The doors and windows were all barred and bolted when the neighbors gathered upon the scene. There the old man lay; the negro was shot in the room of the old man and had the jewelry

of his master near his hands. As soon as the negro gained consciousness, he vainly pleaded his innocence. His protestations could not save him. He was indicted and was given a speedy hearing. The trial proceeded. He was convicted. He was convicted before the trial began. Public sentiment had convicted him. The jury brought in a verdict of guilty and said that his life should pay the penalty for his crime. Gentlemen, what if you had been on the jury, what would you have done? What would your verdict have been? The poor, helpless prisoner pleaded his innocence.

What if I had been found shot and Goebel dead at the Capital Hotel, in Frankfort, under these circumstances, and that I had said that I went there to see him on some business, what would your verdict have been? What would it have been in the case of the colored servant? The poor prisoner pleaded his innocence. That was the only thing he had on his side. He was not guilty, gentlemen. But his innocence did not save him. He was hanged.

And, by and by, the great searchlight, "Time," was turned upon events. By and by the great unraveler of all mysteries began to solve this problem. The negro was dead; he had been judicially murdered; the jury had taken from him that which they could not give back to him—his life. It was beyond human power to restore, when the world knew that he was not guilty. On his deathbed a noted bank crook confessed to the murder of the old man, and told the circumstances surrounding it. A few months before the occurrence, he had come to the quiet little village, as a day laborer. He had learned from the gossip of the townspeople the reputed wealth of the old bachelor. He determined to have his money. On the evening of the murder, a dark and cloudy day in November, he had slipped by stealth up the quiet lawn, under the somber timber and into the wide hallway and into one of its dark and neglected alcoves. There he remained until late evening came, dragging behind it the drapery of night. He was unobserved, as the house was large and spacious, with few occupants—only two. The doors and windows of the old home had been barred and bolted by the faithful old colored servant upon the approach of night, as had long

been his custom. He went to his room thinking of no harm to his old master, whom he had so faithfully served, and for whom he had at all times been ready to give up his life. When the dead hours of night dragged their heavy forms along, when innocent humanity was locked in the arms of refreshing sleep, the burglar stole from his place of secret hiding, wound his course up the still stairway to the room of his victim. He crept into apartments owned by another, in search of gold, and found the white head of an old man lying upon a pillow in easy repose. He began to search for his jewelry and gold. The restless hours of old age were soon disturbed. The burglar demanded the toil of his years, or his life. The encounter soon began. Pistols were fired in quick succession. The faithful old colored man rushed to the scene of the difficulty, just in time to receive the shot of his master, and fell, groaning, to the floor. The burglar dropped the jewelry he had, fired a parting shot, dropped his pistol, and fled. The old man fell, lifeless, to the floor. The burglar returned to his secret hiding-place unharmed. The neighbors battered down the front door and swept up to the room of the tragedy. In the hurry and excitement of the hour, the real murderer passed out unnoticed and went his way, uncaught, unsuspected and unharmed.

Gentlemen, the history of this world is full of such examples. And so our lawmakers, in their wisdom, have said that before you can take a man's life or his liberty on circumstantial proof, the evidence introduced by the Commonwealth must be such that the crime can not be accounted for on any other hypothesis than the guilt of the accused.

Dreyfus was sent to Devil's Island on circumstantial testimony and perjured proof. The judiciary of France is disgraced for ever on account of it. On circumstantial testimony, Samuel Arnold, an innocent man, was sent to Dry Tortugas for life for alleged complicity in the assassination of Abraham Lincoln. Dr. Mudd met a similar fate. On circumstantial testimony and perjured proof, Mrs. Surratt, an innocent woman, was hanged for alleged complicity in the assassination of Abraham Lincoln. America will never outlive it.

Beware, men, of circumstantial testimony. It is untrustworthy; it misleads; it lies; it deceives.

If I did not procure some one of the five named principals to murder Senator Goebel, I could not be guilty, although there was a great deal of hot blood at Frankfort and elsewhere over the state during the contest, although the mountain crowd came to Frankfort, and although the militia was called out. But since there has been so much said on these subjects, even during this trial, a discussion of them may not be amiss, and we will now come to a discussion of the military. I have tried, gentlemen, to take up the various contentions of the prosecution and group the testimony bearing upon their charge, that we might more clearly understand what foundation there is for such a charge. You know the prosecution has always said that the bringing of the mountain men to Frankfort was one part of the conspiracy to kill Senator Goebel. It is the view of the Commonwealth that the militia was another part of the alleged conspiracy to kill Senator Goebel; that the part it was to play was to protect the men after they had done the work of killing Senator Goebel; that it was to protect the criminal, or criminals, after the shot was fired, from arrest or from violence; that that was the part to be played by the military, and that it played that part. This is the view of the prosecution. All this evidence introduced by the Commonwealth to show that no one was allowed to pass into the Executive Building after the shooting; all this testimony about the placing of guards at the gates of the Capitol Square and doors of the Capitol building; and all this testimony about requiring passes before any one could be admitted to the grounds, was for the purpose of showing that no one, not friendly to the act of assassination, or those who indorsed that act, was permitted to pass into the grounds. And all this evidence about keeping men at the arsenal for months before the killing of Senator Goebel, is for the purpose of showing that Taylor and Collier and others had in view the killing of Senator Goebel, and that they wanted the military to be ready to run down to the State House and protect those who were in the killing after it was done.

I do not think I have misstated the position of the prosecution. Those engaged in the prosecution are in that contention as they are in others they have made,—they are either right or wrong. And if the militia was a part of any plan to kill Senator Goebel, the testimony ought to disclose the fact, and so far as I am individually concerned, gentlemen, I have never fully understood the force of the argument on the part of the prosecution that I should be convicted of the murder of Senator Goebel, if the military were used in connection with Senator Goebel's taking off. I was not a military officer. I didn't order out the military after Senator Goebel was killed; I had no connection with the military in any way; I have had no connection with General Collier, Colonel Dickson, Colonel Mengel or Colonel Gray, who had charge of the military, and if, as a matter of fact, the military were used, as is alleged by the prosecution, I can not understand why I should be held responsible for its use.

But, gentlemen, was the military so used? What does the evidence disclose? There are a number of witnesses both on the part of the defense and the prosecution who testify that at least a part of the military company was kept at the arsenal from the November election of '99 until Senator Goebel was killed; and there are a number of witnesses who testify that the militia came to the State House from within eight to fifteen minutes after Senator Goebel had been shot, while the witnesses for the defense say that it was from twenty to thirty-five minutes after Senator Goebel had been shot before the arrival of the military on the State House Square. And there are a number of witnesses who give various versions as to why the militia was called out at all, and the condition of affairs that existed at the time it was called out. It is said by the prosecution that the militia was called out to protect the guilty from arrest. It is asserted by the defense that the militia was called to protect the buildings and their occupants from mob violence. Let us look into those claims, gentlemen.

You remember that McKenzie Todd was formerly one of the witnesses for the prosecution; he was in the reception-room at the time the shot was fired. He told you there was great excitement after the fatal shot had been fired; and

that he, for one, was so afraid of mob violence that he actually left his post of duty and sought safety in flight. He told you that he left the Executive Building and went to the home of Captain John Davis.

George L. Barnes was another witness in this case who was in the Executive Building at the time the shot was fired. He tells you he went immediately to the door of the Executive Building and that he saw Mr. Bill Jett, John E. Miles and others in the State House yard and heard them say that the thing to do was to blow up the Executive Building and murder all of its occupants. He told you, too, that there was a great deal of excitement and a great many threats made against the occupants of the building.

R. N. Miller was an occupant of the reception-room at the time the shot was fired. He said: "The clerks were all excited. Everybody was asking what was the matter. The people began to gather out in the streets; word was started, I don't know how, that they were going to mob the inmates."

Captain Steve Sharpe, that gallant ex-Confederate, told you that the street in front of the Capitol building was filled with a threatening and excited mob; that he went to the Executive Building and tendered his services to Governor Taylor for the purpose of preventing mob violence to the occupants of the building if possible; and that he, at the instance of Governor Taylor, gathered together as many men and guns as he could find for that purpose, and did station them in the Executive Building in order to prevent the threatened and threatening violence.

Captain Della Walcott told you of threats to hang Taylor and all the Republican officials. Chief Justice James H. Hazelrigg and others told you of an excited crowd being in the streets. George Barnes told you that some of them had guns.

If there had been no testimony to the effect that there was great excitement and danger of mob violence you gentlemen would know that from your own experience. The wildest excitement prevailed and the danger of mob violence was imminent. It is a matter of current history with which all are familiar that Senator Blackburn and others, three days

after Goebel had been shot, in a card to the Democrats of the state, pleaded with them not to resort to mob violence.

Now, gentlemen, from the evidence in this case, can you decide that the militia was a part of any conspiracy to murder Senator Goebel? The only evidence introduced on the part of the prosecution was to the effect that soldiers were kept at the arsenal; that they were there for months before the assassination of Senator Goebel, and that they were on the State House Square after the killing within eight to fifteen minutes, while the defense has proved to you beyond all question that the "all right" telegrams had no connection with the killing of Senator Goebel. General Collier and Colonel Gray and Colonel Mengel all testify that the "all right" telegrams were arranged between them on the eleventh of January for Colonel Gray and Colonel Mengel, of the First Kentucky Regiment, to bring their regiment to Frankfort in the event of any disturbance of the public peace upon the receipt of the telegram "all right." These three witnesses are not contradicted by a single witness on that point.

Mr. Todd, Mr. Miller, Mr. Barnes, Mr. Walcott and others tell you that there was great excitement at the time Senator Goebel was killed and that threats were made to mob the occupants of the Executive Building and to blow up the same. Miller and Shepherd told you that Captain Davis took an order from Governor Taylor to General Collier to call out the militia for the purpose, as the order expressed it, to prevent the destruction of property and the loss of human life. Collier tells you that he received that order. He tells you that he sent John Perkins up to the arsenal to tell Captain Walcott to bring a portion of his soldiers to the State House and to leave a part of them there to protect the arsenal.

But why leave them there to protect the arsenal, gentlemen? It is the contention of the prosecution that the company was kept at the arsenal to be in readiness to protect those who were in the murder of Mr. Goebel. It has been the contention of the defense that they were kept there to protect the property of the arsenal and for the purpose of suppressing any disturbance that might occur in Frankfort, the storm center of political excitement at that time. When Senator Goebel was

killed, part of the men were kept at the arsenal for the purpose of protecting the property and another part was taken to the State House to quell any riot that might be organized.

If the militia was kept at the arsenal for the purpose of assisting in the assassination of Senator Goebel, as is claimed by the prosecution, why were soldiers kept on guard duty at night at the arsenal for months before Senator Goebel was killed? Why keep soldiers on guard at night at all? Nobody will contend that soldiers could be used in the night time for the purpose of protecting the assassins of Senator Goebel from arrest. Then why were there walking sentinels, guarding the arsenal at night time? There could have been but one object, and that to protect the property of the arsenal from seizure, as is claimed by the defense. There can be no doubt the arsenal was guarded in the night time by three reliefs of soldiers. Julian Kersey, a Commonwealth's witness, told you that. Then the claim on the part of the defense that the soldiers were kept at the arsenal for the purpose of protecting the property is proven by witnesses for the Commonwealth. Now, what about the other part of the claim of the defense that they were kept there to suppress any disorder that might arise and that they were called out immediately after the shooting of Senator Goebel for the purpose of protecting the occupants and the attachés of the Capitol buildings from mob violence? Let us see. Sam Shepherd told you that immediately after the shot was fired, he advised Taylor to call out the troops. Taylor, in his deposition, told you that he issued such orders. R. N. Miller told you that Captain John Davis carried those orders to General Collier. General Collier told you that he received those orders and that he sent John Perkins to the arsenal with orders to bring a part of the military company stationed there to the State House grounds.

John Perkins tells you that he carried those orders from General Collier to Captain Walcott. Collier and John Perkins both tell you that Senator Goebel had been carried out of the State House grounds before he left the State House to deliver the message. Captain Walcott tells you that he received the message at the hands of John Perkins, the janitor, and

that they took a number of soldiers that had been ordered out to the State House grounds and stationed them at the various gates and at the entrance to the various public buildings occupied by the Republican officials.

There is a difference of opinion as to *when* the company at the arsenal reached the State House grounds. The prosecution attempted to make it appear that the company at the arsenal had received its orders to be in readiness to march to the State House grounds and protect those who, they claim, were concerned in the killing of Goebel, before the shot had ever been fired; but there is no evidence upon that point, gentlemen, and if the prosecution is right in its contention that the military company at the arsenal knew that Senator Goebel was going to be killed before he was killed, and was there in readiness to march to the State House grounds for the purpose of protecting those committing the murder, then those men in that military company, too, gentlemen, are guilty of the awful crime of murder; and I ask you, Mr. Franklin, why it is that these thirty men comprising the military company who were stationed at the arsenal at that time have not been indicted for complicity in the murder?

They live in Franklin County, the county of your home. They are within a few hundred yards of your residence, and if they had knowledge that Senator Goebel was going to be killed, and did, as a matter of fact, go to protect those who did the killing, they are as guilty in the eyes of the law as the man firing the shot, and why have they not been apprehended and convicted?

That they have not is proof positive to my mind that, so far as the militia at the arsenal is concerned, Mr. Franklin and these gentlemen do not believe that they had aught to do with the killing of Senator Goebel. And if the prosecution is right that the militia was to be used for the purpose of protecting those who were guilty of the murder of Senator Goebel from violence or arrest, then those who so used the militia should be held accountable for their conduct. If one of the vast throng of men who are here in the court house should step down on the streets of Georgetown and kill a man, it would not be fair or just, gentlemen, for you or me to be taken up

and tried for the offense, and let the man who did the killing go free.

If the militia was used for the purpose of protecting the one who killed Senator Goebel from arrest or violence, then General Dan Collier, Colonel J. K. Dixon, Col. C. C. Mengel and Colonel Gray used the militia for that purpose. Collier was the adjutant general of the state. He was in supreme command of all the forces of the state, subject to the orders of the chief executive. Collier ordered the militia from the arsenal to the State House after the killing of Senator Goebel, and got the troops on the ground, according to these gentlemen, from within ten to fifteen minutes after the shooting. Collier sent out telegrams all over the state to the various military companies to come to Frankfort at once. In fact, the whole of the militia of the state was called out. He had arranged with Colonel Gray and Colonel Mengel, of Louisville, for them to bring all their forces, the troops, ammunition, arms and men, upon the receipt of the telegram "all right." Colonel Mengel tells you that Colonel Gray and General Collier met him in Louisville and arranged with him what "all right" meant and what he should do upon the receipt of such a telegram. Then, of course, gentlemen, Colonel Mengel and Colonel Gray were also in the conspiracy to kill Senator Goebel, if the militia formed a part of that conspiracy, as these gentlemen claim. There is no escape from that conclusion.

I have had nothing to do with the militia. I was not a military officer. And there is no proof in this record that I ever had aught to do with the militia, except the bringing of the mountain men to Frankfort; a part of them were men who belonged to the military company, but this was five days before Senator Goebel was killed, and the great mass of these men had gone back to their homes. I had nothing to do with the men at the arsenal. I had nothing to do with the ordering out of the troops. I took no part in the assembling of the men after the killing of Senator Goebel to the State House Square. Then, if that was a part of the conspiracy to kill Senator Goebel, it was a part of the conspiracy with which I had nothing to do, and it was a part of the

conspiracy, if conspiracy it was, with which General Collier, J. K. Dixon, Colonel C. C. Mengel and Colonel Gray did have to do; not only those men, gentlemen, but every man who brought his military company to Frankfort to be used for that purpose.

Then, if the militia was a part of the conspiracy to kill Senator Goebel, I ask you why, Mr. Franklin, you have not indicted those who had charge of the militia? also the men at the arsenal? If the use of the militia was a part of the plan by which the murder of Senator Goebel was to be accomplished, then I ask you why you have not indicted the militia? Why have you not indicted General Collier and Colonel Gray and Colonel Dixon and Colonel Mengel? I ask you why, Mr. Franklin. I want you not only to tell this jury why, but I ask you to tell this country why. Tell us why, Mr. Franklin, tell us why. I had nothing to do with the militia. And if the use of the militia was part of a plan to accomplish the murder of Senator Goebel, then I had nothing to do with that part. Then why did you indict me and let General Collier and these other gentlemen escape? If these men were in a conspiracy to kill Senator Goebel, then they ought to be punished. Colonel Dixon has walked the streets of Frankfort much from the day of the killing of Senator Goebel until this good day, living as your neighbor, sir, in your very town; he is living there now. As an honest man and an honest officer, why have you not apprehended and punished him, if he is guilty of the murder of Senator Goebel? General Collier has told you time and time again that if you wanted him, he would come to you, and save you any trouble in sending after him. If the militia were a part of a conspiracy to kill Senator Goebel, why have you not indicted him? Why have you not indicted Colonel Gray and Colonel Mengel? Will any one contend, seriously, that the soldiers were kept in the arsenal at Frankfort before the November election for the purpose of killing Mr. Goebel before it was known who was elected or defeated; or kept there for the purpose of protecting those to be engaged in killing off enough Republicans in the Legislature to give the Democrats a majority, when it was not known they would have a majority.

By your own conduct, there is only one of the two conclusions that can be drawn. The militia was either not a part of the conspiracy, or you, Mr. Franklin, have sat idly and unconcernedly by and witnessed vile conspirators murder one of your party associates and then stalk over this land undisturbed by those whose sworn duty it is to prosecute violators of the criminal law.

It is no answer to say that you will do it in the future. You know the law in this state is that persons who conspire to commit murder can be indicted in any county in the state in which any part of the plan to murder was consummated. If the bringing of the mountain men to Frankfort was a part of the conspiracy to murder Senator Goebel, then the men who came to Frankfort could have been indicted in any county through which they came. They could have been indicted in Fayette County, or in Madison County, or in the county of Clark. If the militia were a part of the conspiracy, then Gray and Mengel could have been indicted in Louisville. Or they could have been indicted in Franklin County, and you could have sent the cases to Bourbon and Woodford and Owen and the adjoining judicial districts for trial. You have had terms of court upon terms of court in Franklin and Scott counties, at which they might have been tried. Then, you have confessed by your own conduct that the militia formed no part of the conspiracy to kill Senator Goebel; and if it did, gentlemen, I had nothing to do with the militia and should not be held responsible for the acts of some one else.

You have not indicted the military officers and the conclusion must, therefore, be reached that the militia was not used by anybody for the purpose of protecting the one, or ones, responsible for the killing of Senator Goebel.

Why is there such a thing as the militia of the state? What should it be used for? You read of the militia being called out to protect human life here, and human life there; called out to prevent the destruction of property; called out to suppress riot and prevent bloodshed,—that is what the militia is for, gentlemen. That is the reason that you pay taxes to pay the salary of the gentlemen who have charge of the militia of the state, its equipments and expenses.

The defense asserts that the state had been in a fever of excitement for many months. The defense maintains that in every city, in every town, in every community and at every cross-roads of the Commonwealth the people were stirred to their very depths. The contention of the defense is that even before the killing of Senator Goebel there had not existed such bitter feeling between neighbor and neighbor and between friend and friend since the late war as existed in this state prior to and following the killing of Senator Goebel. Our contention is, gentlemen, that the intensity of feeling was such that it divided homes of this country; that father and son would not sleep under the same roof; that it divided and separated congregation and pastor and that partners in business dissolved partnership. That is our contention.

We say that neighbor was arrayed against neighbor; and that wherever men met whose political opinions were not the same there was always danger of an outburst; that the whole of Kentucky was like a powder-house, ready to explode at any time and on the least provocation. Our contention is that Frankfort was the storm-center of all the angry passions of the state; that there the excitement was the greatest and the antagonism the sharpest; that there bitter feeling was the highest; that there were two forces, one on the one side threatening to take forcible possession of the offices, and one on the other side saying they should not do that. Everybody knows how barely civil strife in the state, civil war in the state, was averted.

Our contention is, gentlemen, that it was the duty of those who had charge of the militia of the state to keep it in readiness at all times to quell any disturbance that might arise. It was as much the duty of the militia to quell a disturbance that might have arisen between the two political forces at Frankfort, as it was to stop any other disturbance that might have arisen anywhere else in the state.

And if Taylor and Collier and others called out the militia for the purpose of keeping down mob violence, as they assert, it was certainly the duty of the men who had been placed to guard the gates, the doors and the entrances, not to let any one pass through the lines without a permit. You go to any

camp of soldiers and you will find the whole guarded by walking sentinels, and all who enter must know the countersign, or have a written permit from the commanding officer. Any other arrangement would not be military. Go to West Point, go to Fort Thomas, go to the encampment of the State Guards of this state, and you will find they all do it. In every war that this country has ever had, there was never a regiment of men, there was never a soldier camp that was not guarded in this way from the enemy, if it was well managed from a military point of view.

That was what was done at Frankfort. The Commonwealth asserts that the square was barricaded for the purpose of protecting the assassin from arrest, while the defense maintains it was for the purpose of preventing mob violence. So far as I am individually concerned, gentlemen, I do not know why it was done. I was not a party to it; I had nothing to do with it; I am not responsible for it. But if the evidence and reason can be relied upon, the militia was called out to protect the occupants of the Executive Building from mob violence. Taylor did not do what I would have done. After the militia had been thrown around the State House yard I would not have let anybody either in or out until I had sent for some intimate friend of Senator Goebel and discussed with him the best means of bringing the guilty to justice; and I would have admitted to those grounds as many city officials as there were in Frankfort, and would have rendered them every service within my power to determine who were the guilty and help bring about their arrest.

After I got back to Frankfort from Louisville, I did what I could to investigate it. I sent J. B. Matthews, at my own expense, to Louisville to see Miss Weist, to learn if she knew anything about the killing. Youtsey's conduct aroused my suspicion. I knew that her office joined his at the time of the tragedy. I learned that she was in her office. I wanted to see what she knew. I told Grant Roberts and the two Sweeney boys, who worked in the same office with Youtsey, to find out all they could about his conduct and report to me. Would I have done that if I had been implicated with Henry Youtsey in the murder of Mr. Goebel?

I told McKenzie Todd that I wanted a full investigation of the case. This was before I was arrested, and when suspicion rested upon my office. I told him the same after I was arrested. I told Matthews I wanted a full and complete investigation of the murder of Senator Goebel. I employed J. B. Matthews to run down the assassin. He tried it. He wanted assistance. He told George Hemphill and myself in my office before my arrest that Detective T. R. Griffin, of Somerset, was a trustworthy and reliable detective; that he would let the facts remain where he found them; that he would expose the guilty, and in so doing would shield and save the innocent. I agreed that Griffin be called in. He was called in and put to work on the case. This was before my arrest, but after it was charged that the fatal shot came from my office. Griffin was told that I would try to get the Louisville defense committee, through my attorneys, to set apart a portion of the defense fund to pay for detective service. This was not accomplished, and Griffin was told to go ahead with his investigations and unearth the guilty, if possible, and for his services rely upon the reward offered by the Commonwealth for the conviction of the guilty. Griffin promised to do this. I had no money of my own to employ him. I did what I could to expose the guilty. I advised with Judge Yost and Governor Bradley about going to the prosecution and telling them what I had found out and offering my assistance, but I was advised that I would be misunderstood.

Taylor did not do what I would have done. He might have acted differently in a cooler moment, and he might not. I do not know anything about that, but if he did wrong, in that, or any other particular, am I to suffer for the wrongs of others? Am I to be held responsible for some other man's ill judgment? Keep this one point in view, gentlemen: remember that I was not a military officer, and that there is no proof whatever in this whole record that tends to show that I had aught to do with the militia. I brought some of the companies of citizens from Eastern Kentucky, five days before the killing of Senator Goebel, but they had gone home and I did not have the remotest thing to do with surrounding the

State House square with the militia after the killing of Senator Goebel, and, therefore, gentlemen, I could not have had the praise, if it was right, nor the blame, if it was wrong.

But there is one thing, gentlemen, that must convince all sober-minded men that the surrounding of the State House with militia, after the shooting of Senator Goebel; the sending of the telegrams "all right," and the calling out of the militia after the killing of Senator Goebel, formed no part of a conspiracy to murder him. You remember that Colonel Gray and General Collier met and had a conference about the telegrams "all right;" at any rate, Colonel Gray understood what to do when he received the telegrams "all right,"—that he was to take his men to Frankfort at once with all equipments. He did that.

Then, if the calling out of the militia, after the killing of Senator Goebel, was a part of the plan to kill Senator Goebel, then Colonel Gray was in that and understood the plan and acted in concert with the other military officers in getting the militia to Frankfort, in response to the telegrams, "all right." Then Colonel Gray must have been a party to that part of the conspiracy. Colonel Gray was, and is, as far as I know, a Democrat. He was one of Mr. Goebel's supporters. Then, you are asking us to believe that one of his own political friends entered into a plot to bring about his death.

That, gentlemen, is not reasonable. The idea of any set of men taking a Goebel Democrat into a conspiracy to murder Goebel! This is proof positive, to my mind, gentlemen, that the militia formed no part of a plan to kill Senator Goebel. The fact that Colonel Gray is a Goebel Democrat and the fact that Mr. Franklin has not indicted Collier and Dixon and Gray and Mengel and these other men who had charge of the militia, is convincing evidence, to my mind, that Mr. Franklin does not believe that the use of the militia formed any part of a plan or plot to kill Senator Goebel, or he would have certainly indicted these men and brought them to justice.

And for whatever purpose the militia may have been used, I had nothing to do with the militia. Will you convict me for the deeds of others? No; you will not. You surely can not. I beseech you never to let it be recorded in the pages

of Kentucky history, a state whose record is already black enough with crime, that a jury of that state, in the morning of this new century, the best century in all this world's history, with all the achievements of the mighty past thrown at our feet, with all the deeds of noble manhood and splendid womanhood to light our path to duty—let it not be said, gentlemen, that in response to the wild clamor for revenge on the part of interested detectives, known perjurers, and blatant partizans, you were induced to rob a young Kentuckian of his good name, put the stripes of a felon around his limbs and hurry him off to a living death. And all this, gentlemen, with the eyes of a civilized world looking on.

This trial, gentlemen, is not merely of to-day. It will live as long as our state's doings are read. This trial is not over when this jury is dismissed and you start for your homes. As far as my individual liberty is concerned, that will have been settled. But, at its conclusion, will begin the trial of you, gentlemen, and this court, before the great bar of public opinion. Yea, that trial has already begun. And, ultimately, gentlemen, the integrity of the courts of our state and their reputation for fair dealing will be determined in accordance with the merits of the case. The public, yea, posterity, may have its deflections here and there in arriving at just conclusions; prejudice may, for a while, blind the eyes of men; temporary interests may for a time warp their sensibilities and distort their judgment, but in the end their judgment will be clarified, and a just and impartial conclusion will be reached concerning the merits of this controversy.

If you do not know the right of it; if you are not able to see the right of it; if you can not be satisfied beyond all doubt that I am guilty, it is your duty, under the law and under your oaths, to give me my liberty. You have sworn that you would do that. You can not know that I am guilty, because I am not. And in this state of uncertainty, where everybody is wishing to know the truth and where nobody seems to know it, had you not rather be able to say in the future: "If I erred at all, it was upon the side of mercy and humanity." You would take pride in saying that all the days of your life. Your friends would take pride in saying it

of you. They might be disappointed for the time. I know full well the prejudice that exists in this case. But that feeling is rapidly giving away and by and by those who have been most cruel and vindictive will be remembered by their neighbors as men who can not be trusted to do the right thing when pressure is brought to bear upon them. When human life and human liberty are at stake, men should be careful not to be influenced by any consideration other than the guilt or innocence of the accused, and they should know that he is guilty before they lay hands upon his liberty.

Governor Crittenden, in speaking of what care and caution jurors should use when human liberty and human life were at stake, and how sure they should be that the defendant was guilty before they bring in a verdict of guilty, addressed a jury thus: "But upon the other hand, if you should feel that there ought to have been a verdict of guilty, your conscience will be easily satisfied. You will say: If I erred, it was upon the side of mercy, thank God; I incurred no hazard of condemning a man who might have been innocent. How different the memory from that which may come at any calm moment, by day or night, knocking at the door of your heart, and reminding you that in a case where you were doubtful, by your verdict, you sent an innocent man to disgrace and to death. Oh! gentlemen, pronounce no such verdict. I beseech you not to do it, except on the most clear and certain and solid grounds. If you err, for your own sake, as well as for that of the defendant, keep on the side of humanity and save him from such a dishonorable fate; preserve yourselves from so bitter a memory. It will not do, then, to plead to your consciences any subtle technicalities and nice logic; such cunning of the mind will never satisfy the heart of an honest man. The case must be one that speaks for itself; that requires no reasoning; that, without argument, appeals to the understanding and strikes conviction to the very heart. Unless it does that, you abuse yourselves, abuse your consciences, and irrevocably wrong your fellow man by pronouncing him guilty. It is life, it is blood, with which you have to deal, and beware that you peril not your own peace."

These are the words of one of Kentucky's greatest governors; one of Kentucky's greatest Democrats; one of Kentucky's greatest men. He says that the case must be one that speaks for itself. One that requires no reasonings and no argument, but strikes conviction to the very heart. He says that unless it does this you abuse yourselves and your conscience and irrevocably wrong your fellow man, by pronouncing a verdict of guilty. Oh, my God! Is this case such an one that strikes conviction into your heart without argument? He says that "it is life, it is blood, with which you have to deal, and beware that you imperil not your own peace."

This occasion will soon fly by; these prosecutions will soon be over. Whatever the verdict in this case, the affairs of this great world will still go on, and if the Democratic party in this state; if the prosecution in this case; if the brothers of Senator Goebel really want to try Governor Taylor for alleged complicity in the murder of their brother, they will soon have that opportunity if you will do justice in this case. As soon as I am acquitted, as I deserve to be, Taylor will be surrendered for trial by the Indiana authorities. If you want to try him in these courts, instead of me, you have that opportunity. I think I know whereof I speak.

But, leaving out of consideration the question of policy and expediency, justice demands that I be given my liberty. I implore you, gentlemen, to do the right thing in this case. Your days on earth may not be many. I beg of you not to ruin both yours and mine. The Almighty seems to have been in the wake of those who have been doing wrong in these cases. At any rate, gentlemen, whatever may have been the cause of it, those who have been most vindictive have met with misfortune.

They ask you to rob me of the brightest jewel of life — my good name, my honor, ah, even life itself. Your faces, gentlemen, tell me that you will never do it. It was not enough to take my office from me, break me up and reduce me to poverty and want. But they throw me in chains and brand me as a red-handed murderer for resisting, in a legitimate way, the taking of my office. They brand me as a felon for

doing that which any honest man on earth would have done. They have not done right by me, gentlemen. It is wrong; it is cruel; it is barbarous; it is an awful crime against me and a brutal and dangerous stab at our courts of justice and our country's honor.

Let us now take up the charge on the part of the prosecution that the bringing of the mountain crowd to Frankfort constituted a part of the conspiracy to murder William Goebel.

In order that you, gentlemen, may understand fully my motives in bringing that crowd to Frankfort, you must put yourselves in my place. The best rule I have ever discovered, gentlemen, to know whether I have been wronged or insulted or mistreated by anybody, if I am in doubt about it, is to put myself in his place and surround myself by that which surrounds him, and see what I would have done under like circumstances. And that is the intention of the law, gentlemen, in the trial of those accused. It is the duty of the jury to put themselves, as nearly as possible, in the place of the accused, when he is supposed to have committed the crime with which he is charged. I ask you to do that in this case.

Over three years have elapsed, gentlemen, since the crime of which I am accused was committed. It would be unfair to me for you, gentlemen, who are here in the quietude of this little city, where the strifes and turmoils of three years ago are not now felt, and scarcely realized, to try me from the jury-box here. I ask you to go with me back to those unhappy days and put yourself in my place.

Suppose, Mr. Wyatt, you had been elected to the office of secretary of state, as I was elected. Suppose that you had spent months in trying to get the nomination; suppose that after you had spent much time and money, you finally succeeded in getting the nomination at the hands of your party; suppose that after you had been nominated you entered upon a hard canvass for the election; suppose that after many months of trying labor you were finally elected to the high office of secretary of state; suppose that the Republican party of the state had the election machinery of the state in its hands; suppose that the party had put a law in the statute books of the state, whereby the Legislature had the power

to appoint a state board of three election commissioners; suppose that the state board of election commissioners had the power to appoint a county board of election commissioners in every county in the state; suppose that the county boards had the power to appoint the election officers in every voting precinct in this state; suppose that the three state election commissioners all affiliated with the Republican party and that the law which gave them their being gave them the power to appoint all three of the election commissioners in each county from the same political party.

Suppose that the members of the county board and the three members of the state board were clothed with ministerial as well as judicial powers. In other words, that they not only had the right to tabulate the returns of the election and to issue the certificate of election to whomsoever they desired to have the office, but that they sat as a court to try all contested cases. In other words, if they had issued the certificate of election to your Republican opponent, they would then, under the law which had been framed, sit as a court to decide whether they had done the right thing or the wrong thing, when they issued to your Republican opponent the certificate of election. Suppose that the precinct election officers and various county boards did on divers occasions throw out the legal votes which you had received; suppose that several precincts over the state had been contested by your Republican opponent on one flimsy pretext after another, and that the election officers had refused to count that vote; suppose, that several whole counties had been contested where you had received a large majority over your opponent, and that the county boards had refused to count the votes of these counties, alleging the votes had been cast on ballots too thick or too thin.

Suppose that when the matter came up for decision, the state board of election commissioners, all three of whom were partizan Republicans, but two of whom were lawyers and honest men, decided that they were only acting then in their ministerial capacity, and that it was their duty, under the law, their politics notwithstanding, to give the certificate of election to yourself and the rest of your Democratic col-

leagues on the Democratic ticket. Suppose that a majority of the board did do all this, and that you were regularly and legally installed in office. Suppose that your Republican opponent was not satisfied with that, but declared his intention of still prosecuting the contest. Suppose that the two Republicans who had decided for you, in order to get out of the unpleasant predicament in which they were placed, resigned their positions and left the one member who remained, and who had decided against you, to appoint two other members to act with him in the decision of the contest. Suppose that he appointed two Republicans, whom he knew would decide with him, and against you; suppose he declared his intention of doing that very thing; and that one of the men whom he appointed declared, through the public press, his position on the matter before it came before him as judge, and that he said in substance that he would decide for the Republicans when it came to him. Suppose that these two men appointed a third member equally partizan; suppose that the trial came up before these three gentlemen; that you file an affidavit stating that they would not give you a fair trial, and that you did not want them to try your case. Suppose that they said in response, there was no law whereby you could swear them off the bench, and that they proposed to try your case; that the law under which they were serving gave them the right to decide your case, in spite of the fact that they had already virtually said they would decide your case against you.

Suppose the very law that gave them the right to so act upon your case, over your objection and your protest, said in plain words that the decision of the men, who refused to be sworn off the bench and who had already expressed themselves in your case, should be final and conclusive. In other words, when they decided against you, which they were declaring they would do, that you could not take your case to any other court for relief; that their decision settled it; that it was a peculiar court; that it differed from the circuit court in that, if it decided against you, you could not carry your case to a higher court for relief. That in that particular it had privileges denied the circuit court. That it

was a higher court than the court of appeals, in that the court of appeals could not review its findings; that its decisions were too sacred to be touched by human hands. Suppose they should say: It does not matter what we decide; that settles it. We have the power to throw out the votes of one county in the state, if we want to. We can throw out two, if we like, and that still is our business.

Suppose, Mr. Wyatt, that you, as a Democrat, received seventy-five thousand majority over your Republican opponent and that the state board of election commissioners was declaring it to be its intention to throw out the votes of the county of Scott, and the county of Grant, and the county of Franklin, and the county of Owen, and the county of Henry, which gave you a majority. They would not touch the vote of Knox County, although the same grounds existed for not counting the vote of that county as existed for not counting the votes of Scott and Grant and other counties. Suppose that it had been in their power to throw out the vote of every county in this state that gave a Democratic majority. Then it would have been in the power of those three Republicans to control absolutely the distribution of the offices of this state, the vote of the people to the contrary notwithstanding.

Suppose that these three Republican commissioners were under no bond to discharge their duty. Suppose that you were unable, by reason of the law under which they were serving, to bring a civil suit for damages. Suppose that there was no law to punish them criminally for the basest and most flagrant violation of their sworn duty.

Suppose that, in addition, gentlemen, the capital of this state was at Barbourville, Knox County, my home. Suppose that these three Republican commissioners were sitting there in the heart of that Republican stronghold. You would expect to find all the town authorities and officials Republicans, all the police of the town Republicans. Suppose that the contest of your case was going on under these conditions.

What would you have done, Mr. Mitchell? You have been elected to one of the highest offices of the state by the great Democratic party. You had been commissioned by a majority of a Republican returning board to go to Barbourville

to take charge of the office to which you had been elected. Suppose two Republican commissioners had given you your seat and you were there discharging, as best you could, the duties of that office. The Republicans, after it had been given to you, were declaring it to be their purpose to take the office from you, and were proceeding to do it under the conditions which I have described. You were chosen by the Democrats of the state to look after their interests. The Republicans were threatening to overturn the voice of the people. They were declaring it to be their purpose to make slaves of the people of the Democratic party; slaves so far as the right to vote, and have their vote counted as cast, was concerned. You had been elected; you were their representative; they were looking to you and the other members of the ticket to protect and uphold their rights of citizenship.

Now, what would you have done, gentlemen, in a case of that sort? You would have been forced to do something. The law that the Republicans enacted for the purpose of robbing you was on the statute books. Under that law, they had their officers serving. Under it, they were empowered to take your office from you; and from whose decision, the law itself said, there was no appeal possible to any court in the land for relief.

I ask you what you would have done, Mr. Engle? Would you have crept quietly out of the town of Barboursville on the first train, gone to your home and said to your mother, with trembling lips: "Those Republicans have contested the election of my office; they are threatening to take it from me; there is a great deal of excitement up there; I am afraid I am going to be hurt; I wish you would tuck me quietly to rest in my little baby bed, where I can sleep and rest and where no harm can befall me, and let me remain there until this excitement is over. I am my mother's dear little boy, and I must not be in any place where danger might befall me."

Would you have done that, Mr. Engle? You would have been compelled to do something. You either had to stand your ground and contend and fight, if necessary, for the right and liberty of your people or hoist the white flag and surren-

der. What would you have done, gentlemen? You know what you would have done, and so would I. There is not a man of you but what would have stood your ground. You, Mr. Wyatt, with your white locks and matured and ripened judgment, would have nailed your integrity high in the heavens and would have stood your ground until the last drop of your blood was drunk up by the soil of your state. You know that you would. You know that you would not have run to your home and, from that quiet and restful and undisturbed retreat, watched the proceedings from a distance.

Would you not have come to your home people, to the people of Scott, Woodford, Henry, Owen and Bourbon counties, and asked them to go with you up to Barbourville and there, by petition and protest and remonstrance, begged those in power not to disfranchise yourselves and your countrymen, when such conduct on your part was indorsed and sanctioned by the leaders of your party? You might not have taken your guns along, but more than likely you would, if you had been going to the heart of Republicanism in this state. More than likely you would, if you knew those among whom you were to go were armed to the teeth.

If you had not tried to arouse the people to protest; if you had not tried to influence, by petition, those who held the fate of your office and the liberty of the people of your state in their hands, I ask you to tell me what you would have done? Would you have sat tamely around on the streets of Barbourville and have said that it looks as if they are going to rob us; folded up your arms and sighed over what you were about to lose? Or would you have, by every legitimate means in your power, tried to preserve, intact, the liberties of the people and prevent the fair name of your state from being stigmatized with the robbery of the dearest right of Kentucky's freemen?

Gentlemen, that is what I tried to do in all good faith. What was left to the people to do but petition and remonstrate? What could they do but plead with those in power not to take from them their dearest rights and most valued privileges? I did go to the mountains, gentlemen, and I brought the men down there. I felt that I was doing my duty

to my state. I did not know but what similar expeditions might come from other parts of the state. I did not know but the voice of the people might be heeded, if that voice could be raised sufficiently loud to protest.

It was as natural for me to go to the mountains to get men as it would have been for you men to come to the counties of Scott and Woodford and Bourbon, the counties of your home. I did not dream of a conspiracy to murder Mr. Goebel. If I had wanted to kill him, why should I have wanted to bring one thousand men to Frankfort to commit the crime? If the presence of mountain people in Frankfort was necessary to the death of Mr. Goebel, why did I not have him killed with the first crowd I brought to Frankfort? The testimony is in this record, gentlemen, that I brought some three hundred or four hundred men to Frankfort when the election commissioners were passing upon the question as to whom belonged the certificate of election. For what purpose did they come to Frankfort, gentlemen? If the last crowd was brought to Frankfort for the purpose of killing Mr. Goebel, as these men assert, why was it necessary to bring the third crowd to Frankfort before doing the work? There were three hundred or four hundred men in Frankfort from the mountains soon after these contests were first instituted. That was more than there were in Frankfort at the time Senator Goebel was killed. If the presence of mountain men was necessary for the killing of Senator Goebel, why was he not killed at that time? What sense was there in bringing these mountain men to Frankfort for the purpose of killing Mr. Goebel? And the second crowd came from the twelfth to the seventeenth of January. There were some one hundred and fifty of them — as many as were in Frankfort at the time Senator Goebel was killed.

Why bring these men to Frankfort and let them go away, if it was the purpose to have some one of them kill Senator Goebel, or protect the men in the building after it was done? Answer me that. If I had been base enough to have Senator Goebel killed at all, I was base enough at the time the first crowd of men came to Frankfort and I could have had him killed at that time, I suppose, as easily as I

could have had him killed later. If a mountain crowd was brought there for that purpose, as is asserted, tell me why it was ever necessary to bring more than one. Why was the first crowd of four hundred men permitted to come to Frankfort and go away without doing the work? Tell me that, gentlemen. Why was the second crowd ever permitted to come to Frankfort and return to their homes without doing the work? Tell me that!

If I could have got some member of the last crowd to do it, I see no reason why I could not have got some member of the first or second crowd to do it, just as easily. Do you see any reason why I could not have done it, gentlemen; could not have done it just as easily?

The first crowd was brought there for the purpose of showing the interest the people felt in the subject matter, concerning which these commissioners had to deal. Judge Pryor and Captain Ellis were honorable men. They both had been elevated by the people to positions of trust and honor; the people had confidence in them, and whether they decided that we had been legally elected because it was a fact, and out of deference to the will of the people expressed at the polls, or whether they did it as a cold, unsympathizing proposition of law, or whether they did it because it was right, and because the people were demanding fair play, we may never know; at any rate, the people did come to Frankfort at that time and the fact remains that the decision of that board was in harmony with the wishes and views of the people who came to Frankfort from the mountains when that canvassing board was in session.

We believed that their coming to Frankfort had a good effect, and if one crowd had a good effect, why should not another crowd have a good effect also when it came on the same mission? The first crowd of people came to Frankfort solely for the moral effect; so did the third. Do you suppose, for one moment, gentlemen, that I would have brought one thousand men to Frankfort if it had been my purpose to have Senator Goebel killed? They assert that these men were all conspirators. Do you suppose that I would have taken into my confidence one thousand conspirators? Would I have held a

meeting in the Agricultural office for the purpose of having murder committed by men who had never before seen each other? Would I have given out money in such large sums so publicly and so promiscuously? Would I have taken receipts for the money and from so many people? Would I have left behind me written evidences that I had entered into a conspiracy to kill and murder?

But these men say that my bringing to Frankfort of this large crowd of people constituted a conspiracy to murder Senator Goebel and the Legislature. A conspiracy, and a thousand people in a conspiracy! Do you think I would go to the mountains of Kentucky and take a thousand people into my bosom and make them conspirators with me? You never heard of a conspiracy of that character, where the taking of human life was intended. The bringing of that mountain crowd may have been an indiscreet thing. I want to be perfectly frank with you; but, as far as the conspiracy is concerned, you know you would not take a thousand people into your confidence and make them conspirators with you. Do you suppose that, if that meeting in the Agricultural office had been a meeting of conspirators, Culton would have to be introduced to Van Zant,—they had never seen each other before; or Van Zant would have to be introduced to Hamp Howard,—they had never seen each other before, and that they would enter into a conspiracy with themselves and me for the purpose of taking a man's life? That is unreasonable, and the prosecution has to admit it. They complain loudly that it is a conspiracy, but when you get down to the bed-rock of truth, they admit it was not a conspiracy.

There were eight members of that meeting, and out of the eight members but three have been indicted. If the Agricultural meeting was a meeting of conspirators, why indict but three of the eight? If it had been a conspiracy, Mr. Franklin, you would have indicted the last one of the people. You know it, and I know it, and the whole country knows it, and you have confessed, by your failure to indict them, that it was not a conspiracy. Do you believe I would have given out one thousand dollars on that occasion and have taken written receipts for it, leaving behind me written evidence of the

fact that I had entered into a conspiracy then and there to bring about the death of my fellow man? Do you think I would have done that? Do you think I would have left that meeting and gone out in the city of Frankfort and sent a dozen telegrams to people out in the country—Judge Bingham, Superintendent Siler, “Hop” Donaldson, Rice and others, telling them to meet me at London? What for? For the purpose of entering into a conspiracy? If the meeting in the Agricultural office constituted a conspiracy, certainly the meeting at London constituted a conspiracy, because those people met on exactly the same mission and for the purpose of carrying out exactly the same purpose. At that time and place there met Judge Bingham, Superintendent Siler, J. H. Donaldson, Captain Rice, Early and others, and none of these people has been indicted by the prosecution. Many of them were older men than I, and knew more about men and affairs than I do. Then, if that meeting was a conspiracy, these men should have been indicted. Do you believe that if that meeting had been a conspiracy, I would have given out a lot more money and taken written receipts for it, leaving behind me further evidence of the fact that I had entered into a conspiracy to murder my fellow man? Do you believe I would have gone to Barboursville, Ky., and had men go to Frankfort carrying arms openly, calling attention to the people all over the world that they had entered into a conspiracy to bring about the death of their fellow man, and that they wanted to give it all the publicity possible? It is unreasonable.

If the bringing of the mountain crowd to Frankfort was a part of a conspiracy, why have you not indicted Captain Steve Sharpe, who presided at the meeting they held on the steps of the Capitol of the state? Why haven't you indicted Mr. Berry, Mr. Razor, Judge Catron and others who were appointed a committee on resolutions at that meeting, and presented them to the grand jury for consideration? Why not indict some of the men of the Blue-grass who participated in that meeting?

If the idea had been to take human life, do you suppose I would have had the men carry their arms openly, come on

a special train and wear badges, thereby warning the other side that we were there and to get ready for us? Would we have notified the other side of our coming if we had intended to kill them? If it had been the purpose of the mountain men to clean up the Legislature, as Culton puts it, would it not have been far wiser to bring only small arms? One pistol would be worth a dozen rifles in a close fight like that.

And what good would the cleaning up of the Legislature do me? Would you have taken a crowd of your friends up to Barboursville for the purpose of cleaning up the Legislature in the case I have supposed, when the members of the Legislature had nothing to do with your office, and when the mere fact that you had killed a member of the Legislature, or a Republican governor, would make the other Republicans who had charge of your contest decide against you? It would have but one possible effect on the contest I have supposed, and that, in the excitement of the hour, when the blood was hot, to turn you out of your office, whether your opponent had been elected or not.

Do you suppose that I would have brought a crowd of people down to Frankfort for the purpose of killing Mr. Goebel, or the members of the Legislature, when it could have had but one possible effect on the office I was trying to hold, and that to deprive me of it, in the excitement of the hour, and to incite the public to retaliation against the outrage done in killing members of the Legislature, or the contestant for governor? What if that crowd had gone up into the halls of the Legislature and killed a dozen members of the Kentucky Legislature, as these gentlemen allege was the purpose for which they were brought to Frankfort? What effect would that have had on the office to which I had been elected? Let us see.

Would not a storm of indignation have swept over this state? Would not the people have stood aghast at such a procedure? Would not the heart of every honest man in all this land have beat with indignation at such brutal and cowardly atrocities? If the Republicans had brought about such a catastrophe, would not the whole state have said: "Yes, take their offices away from them; they are unworthy of them?" Would not the people have demanded that if such a

gang of vultures had been elevated to high official position, they should be taken from power before they had another opportunity of further disgracing our state? Would not I have known that would be the result of such action? Would I not have known that such a course would take from me my office? Would I have done that when I was trying to hold it?

If I had been so constituted as to resort to murder in order to hold office, would I not have had Mr. Poyntz killed when Pryor and Ellis resigned from office? Had he been dead, the governor, under the law, was the man who had the power to appoint all three of the board of election commissioners. Had Poyntz been killed, Governor Taylor would have appointed three members on the state board of election commissioners, and they would have decided that I was elected, and that I was entitled to my office. That is the law in this state. No well-informed man doubts it.

If I had wanted to kill anybody, in order to hold my office, I would have killed somebody that would have done me some good. Messrs. Pryor and Ellis resigned their office on the twenty-second day of December, 1899, and Mr. Poyntz did not appoint anybody to fill their places until some time afterward. If Mr. Poyntz had been killed within that interval, the law is as plain as the noonday sun, that Taylor had the power to appoint three men to compose the state board of election commissioners. He would have appointed three Republicans. These three Republicans would have decided for us and every state officer, from lieutenant-governor down, would have been holding office at Frankfort to-day, and no power short of revolution could have prevented us from doing it.

If I had been willing to commit murder in order to hold office, would not common sense say to do it that way? But here you have me charged with leading a conspiracy to commit murder that could have but one effect on the office to which I was elected, and that to take it from me. In one breath you say that I am a fool and in the next breath you say that I am the brains of the alleged conspiracy, as you have asserted. If I had sense enough to be the brains of one

conspiracy, I had sense enough to be the brains of another. And, if I had been in the killing of anybody, I would have been in the killing that would have helped Powers to hold his office, and not in the one that would have been sure to take it from him. Is this not common sense, gentlemen? Would I not have procured my man and have sent him to where Mr. Poyntz was and there have killed him? They say that I am an arch-conspirator and murderer, and a fiend and an assassin. Why did I not do that, gentlemen, and then get a pardon for the man who did it and one for myself before Governor Taylor was ousted from office, and when he had the legal right to pardon?

Why did I not commit murder that would profit me something? Why would I commit murder that would take from me that for which I was contending — my office? Ah, gentlemen, there was no conspiracy in bringing those mountain men down to Frankfort. I had but one object, and only one, and that was to serve my state honorably; to represent faithfully those who intrusted me with power and office, to the very best of my ability; to preserve to the legal voters of this state the sacred right to vote for the candidates of their choice and have their votes counted as cast; to hold the office to which I had been fairly elected. My judgment may have been at fault, but my intentions were honest. If mistake it was, it was one of the head, and not one of the heart.

When, at Barbourville, at the meeting in the Anderson Hotel, Mr. Black suggested that it would be impossible to keep those men quiet, and sober, and orderly, I agreed to put a man over each squad for that purpose. When they got to the depot at Barbourville, Mr. Trospen, Mr. Higgins and other witnesses told you that I went up and down the depot and said to the men that they must not get drunk on this trip, and that they must keep sober and orderly and conduct themselves in such a way as to cast no reflection on their end of the state. Mr. Lockhart told you that I said to him that it would not be very safe at Frankfort with a pistol, and it would not be very safe without one; that I advised him not to get drunk when he got to Frankfort, and to keep off the streets, to keep sober, and to keep out of trouble. Other witnesses told you

that I went through the train twice, between Barboursville and Frankfort, and cautioned the men that they must keep out of trouble. Does this look like the conduct of a conspirator, gentlemen? Those men were instructed to wear their badges. If they were going on a mission of murder, would they be advertising it to the whole world?

And when they got to Frankfort, what did they do? They stacked their arms; they put them away. If murder had been their mission, why put away their instruments of war? If they went down there to kill Senator Goebel, or members of the Senate or House of Representatives, why did they not retain their arms, and use them for the purpose for which they are alleged to have been brought? The Legislature was in session that day. Why did they not take their guns and go up stairs and say to the members of the Legislature: "We have come to settle this contest." Why give thirty minutes in which to settle it? According to these gentlemen, these mountaineers would rather kill some one than not. But Culton says the Legislature was to be given thirty minutes to settle the contest. Cecil says fifteen minutes. Why did they not go up there and say: "Gentlemen, we will give you thirty minutes to settle this contest;" and if they did not settle it in thirty minutes, why did not they kill off enough Democrats to make a Republican majority? That is what Golden says was the program. The men were there; they had their guns there, and there was nothing to hinder them from carrying out the program, as suggested by Golden, and Culton, and Cecil.

The old, old adage, "Actions speak louder than words," is applicable to this particular case. Culton said that they were coming down there; that they intended to give the legislators thirty minutes to settle the contest, and that if this was not done, it was his understanding they intended to kill them. George S. Page, who was a member of the meeting, at which I was supposed to have made such a remark, testified that he did not hear me say anything of the kind. T. C. Davison was also a member of that meeting, and he said that I did not say anything of the kind. George S. Page, H. H. Howard, H. S. Van Zant and T. C. Davison attended the Agricultural office meeting, and said that I did not use the

words attributed to me by either Culton or Cecil, but that I told them and other members of the meeting to get good men to come to Frankfort for the purpose of petitioning the Legislature.

But the best proof of the pudding is in the eating of it; and the best proof of what the men came down to do is what they did. It is confessed by everybody that they were strong enough to have carried out any plan or anything they might have determined upon. And since there was nothing to prevent them from giving the legislators thirty minutes to settle it, and if they did not do it, to have killed the last one of them; and, since they did not kill any of them; since they never tried to kill any of them, the conclusion is inevitable that they either did not come down to Frankfort for the purpose of killing the legislators or giving them thirty minutes to settle the contest, or they failed to carry out their plans when they did come. There is no escape from that conclusion.

We have heard a great deal about the killing of members of the House in the hall of representatives, but we have heard nothing about a fight in the Senate, or killing members of the Senate. How would a fight in the House chamber affect Senator Goebel or other members of the Senate? The two bodies are separate and distinct, and occupy different apartments, and if it had been the idea to kill Senator Goebel in a brawl, the idea would have been, not to have a fight in the House, but a fight in the Senate. If you wanted to kill the proprietor of the Lancaster Hotel, here in Georgetown, in a fight, would you go into the Wellington Hotel and there raise a fight? You would go to the hotel whose owner you wanted to kill. If it had been the idea to kill Senator Goebel in a fight, the fight would have been raised in the Senate; not in the House. That is common sense, gentlemen. These gentlemen realized the force of that, and in their effort to try to avoid the effect of such reasoning, they take the more absurd and ridiculous position that the idea of the Republicans was to kill off enough Democrats to make a Republican majority; in other words, instead of killing one man, to kill a dozen or two.

If a fight had occurred in the House chamber, what would have been the result, aside from the one I have already referred to? Only one; and that is, that a great many of the Republican members would have been killed, as well as a great many Democratic members. And, surely, the Republicans would not enter into arrangements whereby their own members were to be killed, or any part of them? And all this talk about a fight in either House has either been lies, deliberately sworn to, or those who talked it are maniacs.

It is claimed they wanted to kill the senators and representatives, so that when they came to vote on the question as to whether Goebel or Taylor should hold the seat as governor, there would be a majority for Taylor, and the way to get that majority was to kill enough Democrats to give the Republicans a majority. I have recently looked up just how the members stood politically. Counting the independent Democrats, who voted with the Republicans upon most measures, the Senate was Democratic by two votes; counting the anti-Goebel Democrats with the Republicans, the House was Democratic by sixteen votes, so that on joint ballot, the Democrats had a majority of eighteen votes; then, nine of them would have to be killed before the Republicans would have had a majority, and it is safe to say that five Republicans would have been killed in the operation; for it would hardly be expected that all of them would escape.

Then, gentlemen, is it not true that if there had been any arrangement by which a row or fight was to take place in either the House or the Senate for the purpose of killing enough Democratic members to give the Republicans a majority on joint ballot, for the purpose of out-voting the Democrats and seating Governor Taylor, we can not escape the conclusion that the Republicans must have been warned of such a procedure on the part of their Republican friends, otherwise they would have as likely been killed in such a brawl as the Democratic members.

Excitement was extremely high; trouble was expected from the country at large; and those at the storm-center of the wild excitement that prevailed in the state were in daily dread that an outburst might come, at any moment, and their

lives be lost. It is wholly unreasonable, gentlemen, that if there had been a movement on foot on the part of any Republicans in Frankfort to slaughter a sufficient number of either the Democratic members of the House or Senate to give the Republicans a majority on joint ballot—I say that it would be wholly unreasonable to contend that the Republican members were not notified that such a catastrophe was coming, and warned to be prepared to take care of their own lives. The prosecution says: “Yes, they were notified, and they were to fall flat on the floor upon the firing of the first shot.” Then, gentlemen, if they were warned that such a movement was on foot, they became a party to this alleged conspiracy.

Then, you have forty-two members of the House and eighteen members of the Senate who were parties to this conspiracy, if such there was, to bring about the death of Senator Goebel. And if they were in the conspiracy, Mr. Franklin, why have you not indicted and convicted them? This county would like to know that. I fall at your feet and beg for that little crumb of information.

Again, no man will believe that all the Republican senators and representatives would swear falsely if they were placed on the witness-stand in this case. And if there were any plans or arrangements by which the Democratic members of either House were to be killed, the Republican members would certainly know about it; and if you believe in good faith, Mr. Franklin; if you have any faith, Mr. Campbell, in your assertion that there was such a conspiracy to murder your lawmakers or lawbreakers, as the case may be, then why have you not called these Republican members who must have known about such a plot, to substantiate Golden and Culton and Youtsey, *et id omne genus*, in their statements to that effect, when they can not be believed unless they are corroborated and when no one of them can corroborate the other? Then, gentlemen, it is not only true that Culton and Golden and Cecil and Company are swearing to what they know to be untrue, but it is plain that the prosecution knows there was no such conspiracy to kill off enough Democrats to make a Republican majority; such is the talk of a lunatic, an empty-headed idiot.

But, for the sake of argument, and that only, let us suppose the crowd did come down for the purpose of killing members of the Legislature. For the sake of argument, and for that only, let us admit for the time being, they did come down for that purpose; suppose they came down for the purpose of blotting Frankfort off the map; suppose they meant to overturn civil institutions in this state and institute in their stead a reign of terror and bloodshed. They never came for any such purpose, but suppose they did, it is beyond dispute, beyond question, that they did not carry out the purpose for which they came, if they came on any such purpose. They came to Frankfort; they were orderly; they petitioned the Legislature; they went home; no hair on the head of a single man was harmed. If they came to the capital to do violence or harm they did not do either. That being true, there is no law to punish them for intentions which were never carried out.

Let me illustrate: Suppose, Mr. Booth, that some one should go to the home of one of your neighbors for the purpose of stealing one of his horses; suppose that after he got there he concluded he would not take the horse, and returned home, leaving the horse of your neighbor undisturbed and unharmed; would any one contend that he could be punished criminally for the intention he entertained, when that intention was not carried out? Nobody would contend that. There is not a lawyer on the other side of this case who will slander his professional reputation by asserting that the man could be legally punished. And if the intention of the mountain men was to murder, as Culton claimed their intention was, it was not carried out. If some man in this house had it in his heart to murder the stenographer here when this court adjourns; and if when court does adjourn he is not harmed, there is no law to punish the man, whatever his intentions may have been, and however clearly they may have been established. So you can not punish a man for his intentions. And if the mountain people did come to Frankfort for the purpose of giving the Legislature thirty minutes to settle the contest, it is evident they did not carry out their intentions, and, therefore, they could not be punished for coming with those intentions.

And it naturally follows that I could not be legally punished for bringing the mountain people to Frankfort, if they did come on a mission of murder.

But, gentlemen, they came with no such intentions. From the time they entered Frankfort on the morning of January twenty-fifth, until they left it, on the evening of the same day, their conduct bespoke a peaceful mission. It is a difficult matter, as you gentlemen know, to control the conduct of everybody. Because one man disturbs church services, are we to conclude that it is the desire of all present that the services be disturbed? Because some one of the mountain men got drunk and said rash things, as Mr. Vreeland testifies that one did, are we to conclude that all the rest of the men indorsed such statements? It would be as fair to say that all members of a church were glad, in their hearts, that the services were broken up, as to say that all the mountain crowd indorsed sentiments of violence. The way to judge the purpose of a congregation at church; the purpose of a mass-meeting; the purpose of any public meeting, is to decide their purpose from what they do as a body, and not from some wild saying of an irresponsible member. Is that not true, gentlemen? How else can it be done?

Suppose that the people in this court-house at this moment should be called upon—the citizens of Georgetown—to express their views as to whether a certain proposition should be enacted into a law by the town authorities. Suppose some one introduces a resolution declaring it to be the sense of the citizens of Georgetown here present that the proposition should be enacted into law, and the chairman of the meeting should say that the resolution is now open for discussion and some wild fanatic should arise and say: “Mr. Chairman, I am a citizen of Scott County and a resident of the town of Georgetown. I have helped to support your laws by my means for twenty years. Lawlessness still exists; I am in favor of wiping out of existence every law that has been enacted by the authorities of this town. I am tired of law. I am not only in favor of doing that, but I want every particle of law that governs the conduct of the people of this state, whether common, municipal or statutory, immediately ren-

dered void." He sits down. He has had his say. The people pay no attention to his wild vaporings, but go ahead and say, by an unanimous vote, that they are in favor of the proposed enactment becoming a law for the government of the town. What would you say was the intention of that meeting? Would you say that the citizens were in favor of law or in favor of no law? How would you judge? You would judge from what a majority of them did.

And if one of you gentlemen should be indicted for participating in this mass-meeting, for the offense of being opposed to law and order, Mr. Franklin and these other gentlemen would say, in their appeals to the jury, that you, all of you, were scoundrels and lawless citizens at heart; that you did not mean what you said when you voted for the resolution for the purpose of having certain laws enacted for the government of the people of the town. These gentlemen prosecuting you would say that you were doing it for the purpose of covering up your real intentions. Is not that so, gentlemen? And when some mountain man at Frankfort on the twenty-fifth of January, not a member of the meeting, happened to say some violent words, these gentlemen immediately say that he gave utterance to the real intention of the coming of the mountain people. They say that when those people were assembled in a peaceful manner and passed resolutions begging and pleading that their votes be counted as cast, asking that our public servants do not tarnish the fair name of our state with the overthrow of the most sacred of all the rights of the people, it was a blatant mockery of their real purpose, and that they did not mean it.

The mountain people held that meeting on the twenty-fifth of January when the noonday sun was high in the heavens. There, in plain view of all the people of Frankfort, on the public square of the state, and on the threshold of the Capitol, it was witnessed by friends and foes alike. Was that the conduct of men who conspired to murder? Ah, gentlemen, conspiracies to kill and murder are not formed or carried out that way. I was never in a conspiracy, gentlemen, to do violence to anybody; but from what I have seen and what I know of humanity, conspiracies are not framed in the open.

The crimes that fill the annals of this country are not done with humanity gazing on. Burglars make their way to your home in the dead hours of night, when you and the rest of humanity are supposed to be embraced in the sweet arms of sleep. Thieves roam over the country and never lay hands on that which is not theirs when mortal eyes are supposed to see them. Rapists never select the crowded thoroughfares of our cities in which to commit their fiendish crimes. Conspirators who seek the life of their fellow men do not hold public meetings in the blaze of the noonday sun, on the Capitol square of their state—in the midst of the camp of their intended victims and in their very presence.

If the bringing of that mountain crowd was any part of a conspiracy to murder, and if I had a hand in it, I ought to be sent to the asylum for the insane, and there, with raving maniacs as boon companions, spend the remainder of my days, in the charge of those whose duty it is to care for the helpless in head. But these gentlemen assert, both publicly and privately, in court and out, that I am not a fool. Then, if I am not, credit me with more sense than to enter into a conspiracy to take human life with a thousand other fellow conspirators and in the midst of a crowded city, with hundreds of those unfriendly to my cause looking on, and in the very heart of the camp of my supposed victims.

The assertion on the part of the Commonwealth that the bringing of the mountain crowd to Frankfort constituted a part of the conspiracy to kill Senator Goebel, is an evidence of the weakness of its own position. The sober-minded part of the country repudiates such a charge. The sense of the land says that could not be any part of a conspiracy, and for the sake of your own reputations, gentlemen, you had better abandon it.

There is not a witness, except Cecil, in the whole of the record who testifies that I ever had the remotest connection with any mountain man from the twenty-fifth to the thirtieth of January; Cecil, the indicted murderer, robber and rapist! Cecil, who had his alleged talk alone with me! Cecil, who is swearing for and getting immunity! the saintly Cecil, who refused, he says, offers of money for murder from Taylor, but who stands indicted for the robbery of Mr. Colgan for two thousand one

hundred dollars! There is no proof that I procured any of them or advised any of them, or tried to get any of them, to kill William Goebel except the testimony of the pious and godly Cecil. Wharton Golden himself said that I did not have any talk with him after the large body went home. Culton told you that he had no talk with me in reference to the men remaining over at Frankfort or the work to be done by them; that he never in his life talked to me concerning the killing of Goebel.

And the hopes of the prosecution upon which they can base a conviction is that the men came upon an unlawful mission, and while thus engaged in that unlawful mission Senator Goebel was killed, which charge, you know, gentlemen, is unfounded, from the fact that nearly all the men had gone home, and that the others who remained had as much right to remain in the city of Frankfort as you or I. And the court told you further, gentlemen, in the admission of testimony to show threats on the part of the Democrats that they intended to take forcible possession of the offices as soon as the Legislature and the contest board passed upon the same, that those men had a right to remain on those grounds for the purpose of resisting any such attempt. If some one should try to take forcible possession of your home and throw you bodily out of it, you know that you would have the right to resist any such illegal attempt, and you know further that you would have the right to call in your neighbors to help you resist it. Those men had the right, gentlemen, to remain on those grounds for that purpose, and that is why they did remain. The prosecution will not deny that they had the right to remain there for the purpose of preventing or helping to prevent the Democrats or anybody else from taking forcible possession of those offices. And nobody asserts, with any evidence to support it, that any one of those mountain men who remained over at Frankfort on the twenty-fifth of January killed or had anything to do with the killing of Senator William Goebel.

Mr. Franklin did not believe, and does not now believe, that any one of those men who remained over at Frankfort did the shooting that resulted in the death of William Goebel;

for when he came to make the indictment against the men whom, he asserts, killed Senator Goebel, he did not include within it a single mountain man who came with the large crowd of mountain men, nor a single mountain man who remained over after the great majority had returned to their homes. And if no man who came with the mountain crowd killed Senator Goebel, even if I brought them for a million unlawful purposes, how could I be held responsible for the death of Senator Goebel, if none of them had anything to do with the firing of the shot, nor was present when it was fired?

Bear in mind, gentlemen, that no man who came with that crowd has ever been indicted for the firing of the shot that killed Senator Goebel. There have been only five men indicted for that—Holland Whittaker, who lives in Butler County, and who did not come down with the mountain crowd; Dick Combs, who lives, I think, in Lee County, and who had nothing to do with the mountain crowd; Jim Howard, who was not with the mountain crowd and had nothing to do with it; Berry Howard, who was not among the mountain crowd, did not come with it and had nothing to do with it; and Henry E. Youtsey, who lives in Campbell County, and who was at Frankfort and had nothing to do with that mountain crowd. He says he did not. And when Mr. Franklin came to make the indictments against the men who, he says, shot and killed Senator Goebel, he indicted no one of that mountain crowd. Mr. Franklin has admitted by his conduct that William Goebel was not shot by any man of that mountain crowd, because he did not indict any of the mountain men for doing it. He says that Goebel was killed by Jim Howard and Henry E. Youtsey. Howard did not get to Frankfort on the thirtieth day of January until within less than an hour before Goebel was shot, and five days after the mountain men had come to Frankfort, and eight hundred out of the one thousand had returned to their homes. Youtsey did not come with the mountain crowd, and had nothing to do with it, if his own testimony can be believed. Then, if no member of that mountain crowd fired the shot that killed Senator Goebel, and if other men did fire the shot, as the Commonwealth

contends by their action in indicting others, then why should I be held responsible for bringing them to Frankfort?

But suppose, for the sake of argument, that some of the members of that mountain crowd had killed Mr. Goebel; suppose that Jim Howard, and Berry Howard, and Henry E. Youtsey, and Dick Combs, and Holland Whittaker had never been indicted; suppose that some of the mountain men who came down with that large crowd had been indicted as the ones who killed Senator Goebel, would it follow, as a proposition of law and as a matter of justice, that I ought to be convicted? Should I be convicted, gentlemen, on the plea that had the mountain men not come to Frankfort, Goebel might not have been killed? Should I be held responsible for every act of every mountain man because I was the cause of his being in Frankfort? Oh, no, gentlemen; that is not the law, and it has never been the law. Had I not been indicted for the murder of Senator Goebel, this trial would not now be in progress in this city. Had I never been born, I could not have been indicted. Am I to be held responsible because the Creator of the universe gave me an existence here on earth?

Were my trial not in progress here, it would not have become necessary for the Commonwealth and the defense to summon a lot of men from the mountains as witnesses here in this case. If some of these witnesses, who have been summoned here as witnesses for the defense, should, during their stay in Georgetown, rob a bank or plunder a store, or kill a man, would it be fair to hold me responsible for either robbery or murder, because had it not been for me the crime would not have happened, when, as a matter of fact, I had nothing to do with the crime? I was the cause of their being in Georgetown; I summoned them as witnesses, and after they got here, without my knowing it, they entered into a conspiracy to rob a bank, or kill a man; and, if you please, they do kill one of your Georgetown citizens,—am I to be held responsible for that? And if I were the cause of those mountain men getting to Frankfort, and if, after they got there, they entered into a conspiracy to kill Senator Goebel, should I be held responsible for that? It would be just as fair to hold me responsible for the supposed murder in

Georgetown as it would to hold me responsible for the murder of Senator Goebel, under such circumstances as that.

The instructions in this case tell you that if I counseled, or advised, or procured the murder of Senator Goebel, then I should be convicted. And, if I counseled, advised and procured the supposed murder here in Georgetown, I would be guilty. But I could not be guilty in either case unless I counseled, advised or procured the murder. If, after those mountain men got to Frankfort, they grew impatient and came to the conclusion that they would end the contest by killing Senator Goebel, without my knowledge and without my procurement, and they did so kill him, is there a sane man upon top of the earth who would contend that I ought to be held responsible for it? Is there a lawyer on either side of this case who would slander his professional reputation by asserting that I would? Will Mr. Franklin contend before you, in his argument, that if, after those mountain men came to Frankfort, some of them got together and decided that they would kill Senator Goebel, without my knowledge, yea, even without my procurement, and did so kill him, I ought to be held responsible for that, because, had it not been for me, they would not have been in Frankfort? No, gentlemen, he will make no such contention before you. We are all a weak, short-sighted set of human beings here in this world; finite creatures with finite minds; born into this world with imperfections and short-comings. Oh! gentlemen, if we could but lift the golden curtain that shields from our view the mysterious future; if we could but see beyond the heights and into to-morrow; if we could but know of approaching dangers that are to seal the doom of some part of humanity; if we could but see the pitfalls before our feet, a great part of the misfortunes and calamities and tragedies of life could be avoided. But no mortal man has been vouchsafed such gifts. There is but One who is omniscient; there is but One whose brain knows all; but One whose vision is clear enough to pierce the darkness of the future and tell what is to be to-morrow. If I could have known that the coming of those mountain men would result in the death of Senator Goebel, if it did so result, they never would have

been brought. If those ignorant people living at the base of Mount Pelee, or those splendid Americans living at Johnstown, had known what was about to happen to them, they would not have lost their lives. And for you, gentlemen, to say that I ought to have known that the bringing of the mountain men to Frankfort would result in the murder of Senator Goebel, is to require of me more wisdom and foresight than it has ever pleased an All-wise Creator to bestow on mortal man. You will not require it of me. But if the prosecution can be relied upon to name the men who fired the fatal shot, none of the mountain men had aught to do with it. No one of them fired the shot; no one of them was present, aiding or abetting those who did fire it. A different set of men altogether has been indicted for that.

Let us now, gentlemen, turn our attention for a few minutes to the pardon issued to me by Governor Taylor. It is claimed by the prosecution that I was in a conspiracy with a number of others to bring about the death of Mr. Goebel, and that it was a part of the plan for Governor Taylor to pardon all those implicated. And in support of this contention they continue to say that Taylor did pardon myself and others. Let us look at this a moment, gentlemen. Let us apply the test of reason to what they allege to be true and see if the ground they take is tenable. In the first place, gentlemen, no one of the pardons was issued earlier than the afternoon of the tenth day of March, 1900. They were not issued, gentlemen, until after Culton had been arrested and lodged in jail; they were not issued until after warrants of arrest were issued for myself and my brother, and Finley and old man Davis.

The testimony in this case is that on the night of the eighth day of March, 1900, Culton was arrested and an attempt made to arrest old man Davis and myself at his home on Lewis Street, in Frankfort, and that we made our escape to the State House Square. The testimony is that during all the day following, old man Davis and myself stayed in the land office, and on the evening of that day, when we had to make our escape until the mad passion of the hour was over, pardons were issued to us as a mat-

ter of temporary protection. It is in evidence, gentlemen, that I meant only to go to the mountains of Kentucky and there remain until the excitement died away, and that then I meant to stand my trial. You remember that Captain Davis was issued a pardon at the same time that I received mine. Who is there, gentlemen, that now thinks that old man Davis had anything to do with the murder of Senator Goebel?

You remember that on the night of the ninth of March, after officers had tried to arrest him and me, I had a talk with Judge Yost as to what I should do. Judge Yost was my lawyer in my civil suit. Judge Yost thought it advisable that Captain Davis and myself should go over to the State House grounds. He did not believe that we could possibly be protected by the civil authorities; he thought the state of excitement was such that we could not possibly be protected from mob violence. You remember that is the testimony I gave, gentlemen, and if I had not been telling the truth about it Judge Yost would have been called as a witness to contradict me. Judge Yost was a witness in the Ripley trial. He has been before your grand juries, Mr. Franklin; you know to what he will testify; you know he did advise me that the civil authorities could not protect me. You remember that he stated that I could not possibly get a fair trial and that if I could get to the mountains of this state and remain there until I could get a fair trial, and until the passion of the people subsided, he believed it would be the proper thing to do. You remember, gentlemen, Victor Anderson, one of the witnesses for the prosecution, testified that I wanted him to get Colonel Breckinridge for me over the telephone on the morning of the tenth of March; I testified to the same thing, gentlemen. You remember I told you that I wished to consult Colonel Breckinridge as to what I should do, but that I was unable to get him. Remember, I said to you that I had reasons why I wanted to be away from Frankfort at that time. In the first place, I did not feel that the civil authorities there could protect me from mob violence, whatever might be their efforts to prevent lawlessness. Excitement ran high. Passions were inflamed. I did not believe it was safe for me, or that I would be protected,

if I surrendered at that time. That is one reason why I wanted to get away. Another one was that I had advised with Judge Yost, a lawyer, about the matter and he thought it best for me that I be away until after the passions of the people subsided. Another reason is, that one hundred thousand dollars had been appropriated to prosecute the men charged with connection in this affair. I was a poor boy. I did not have money of my own to fight properly a case of that sort. That is a great deal of money for the prosecution of anybody in a matter of that kind. I knew that it would be almost impossible to eliminate politics from the trial of this case, and especially in Franklin County, the storm-center of excitement in the state. I did not know at that time, of course, that I could get a change of venue to this county. I did not believe that if I were tried in Franklin County, where excitement ran so high, my innocence would be a shield to me in the courts. Taylor would not place a squad of soldiers around the jail to protect me.

Gentlemen, I did not believe I could be protected by the civil authorities in Frankfort. I did not believe I could get a fair trial if I remained. I knew that my attempt to escape to the mountains was of doubtful expediency; I knew the dangers of arrest; I knew how attempted escape would be construed; I knew how a pardon to me in this matter would be interpreted. I was not unmindful of the situation of affairs, and, gentlemen, I want you to put yourselves in my place; that is the best way to determine what you would have done.

Suppose you had been elected to a state office, as I was elected; suppose that the Republican contestant for governor had been shot down as Senator Goebel was shot down; suppose that you were charged with the assassination of the Republican contestant for governor; and suppose that the Republican press of the state was loud in proclaiming you guilty and was daily and hourly fanning the passions of the people to a blaze. Suppose that the Republican Legislature had appropriated one hundred thousand dollars to prosecute you; suppose that you were to be carried into the Eleventh district to be tried for the alleged conspiracy;

suppose you knew that in that district you would be tried by a Republican circuit court; that a Republican Commonwealth's attorney would prosecute you; that the jurymen who tried you would be summoned by a Republican sheriff, and when they were summoned they would all be Republicans; suppose you knew that you were to be tried in that Republican stronghold, while the people were drunk with passion and their blood was hot with rage; and suppose that the prosecution against you had not only at their backs the strong and powerful arm of the Commonwealth, with all its resources, but it had, in addition to that, one hundred thousand dollars of the people's money at its command to purchase testimony against you; and suppose your lawyers, whom you had employed in the civil suit, and upon whom you relied for counsel and advice, told you that you had better get away for the time being; that the people of the state were swept off their feet; and that, in time of excitement, people apparently go mad, their reason is dethroned; and suppose that your lawyer should say that you had better secure a pardon and get away to save your life until the people came to themselves; suppose you knew that if you did get away, whether you had one pardon or a thousand, and whether you tried to escape one time or a million, you knew within your heart of hearts that you were not guilty of the crime with which you had been charged, and that in the end your good name would be vindicated; suppose all this, gentlemen; I will let each of you, in your own hearts, answer me—what would you have done?

Why, it is not the first time, gentlemen, in the history of this country that innocent men have tried to escape the wrath of indignant people. We all know that Jefferson Davis, the president of the Southern Confederacy, after the Civil War was over, and after he was threatened with arrest for treason against the United States, tried to escape in a woman's dress, and was captured in a cornfield. At any rate, that is the generally accepted version of it. Davis knew that he was not guilty of treason; he knew that he had fought for the South and its cause, a cause he believed to be right and

to be his duty. He fought for home and for his people; his cause failed and he was charged with treason and tried to escape, gentlemen, not because he was guilty, but to save his life from the mad storm of passion that raged through the whole North. And you remember, gentlemen, that he also accepted a pardon for treason against this government. He did not accept a pardon, gentlemen, because he was guilty; he did not attempt to escape because he was guilty.

So, gentlemen, this is not the first time in the history of this country that innocent men have tried to escape from unreasoning hate and have accepted pardons for that of which they were not guilty. What would you, gentlemen, have done had you been situated as I was situated? Would you not also have accepted a pardon? Captain John Davis tried to escape; he was arrested with me; he also was disguised as a soldier; he, too, had a pardon in his pocket; and who is it that now claims that old man Davis was guilty of having any connection with the murder of Senator Goebel? The prosecution knows that he is not guilty. He has been released on bond, sent home and told that he could remain with his wife and children. You know that he is not guilty, and yet he tried to escape. The very men who the prosecution now contends fired the shot that resulted in the death of Senator Goebel have no pardons. Isn't it in evidence that Jim Howard has no pardon? Isn't it in proof that Youtsey has none? These are the men behind the gun, according to the prosecution, and yet neither of them has a pardon, while Captain John Davis and Holland Whittaker, whom the world knows to be innocent of the crime charged against them, both have pardons. Then, what becomes of the claim of the prosecution that pardons were issued to those implicated in the murder of Senator Goebel?

And if the pardon had been issued to me, as these gentlemen assert, I want to ask you if you don't believe that I would have used a little common sense in the issuing of that pardon, if I had been implicated in the murder of Senator Goebel. I want to ask you, gentlemen, if you don't believe that I would have used a little common sense in regard to that matter? This pardon was issued on the tenth day of

March, 1900. Senator Goebel was shot on the thirtieth of January, and did not die until the third day of February; and the contest committee did not try to declare Goebel governor until the second and third days of February. It is not asserted by anybody that he was legally declared governor until the nineteenth of February. If I had been in a conspiracy to kill Senator Goebel, don't you know that I would have had that pardon issued at a time when the act of Governor Taylor would have been legal? There is no question about the legality of his act before the contest committee decided against him. Why did I not have the pardon issued after Senator Goebel was shot, and before the decision of the contest committee? There could not have been any doubt as to its legality at that time. The gentlemen must either think that I am a fool, or, at any rate, they attribute to me most idiotic things. After the contest committee had decided that Goebel was rightfully governor of his state, and after he died and Governor Beckham stepped into his shoes and began to act as governor of this state, in a room in the Capital Hotel at Frankfort, and the contest was carried to the supreme court of the United States, don't you know that if I had been guilty and the pardon had not been issued before the contest committee decided for Governor Goebel, we would have had Governor Beckham enjoined from acting as governor until the supreme court of the United States passed upon the legality of his title; and had the pardon been issued before it did pass upon it, the whole of the legal fraternity knows that under that state of the case the pardon would have been valid.

Don't you know that if I had been guilty, as these gentlemen contend, and had hoped to get a legal pardon, don't you know that I would have secured a pardon during this time and would not have waited until the contest committee and the courts decided against Governor Taylor? The pardon was issued, gentlemen, under the state of the case that I have attempted to describe. It was issued, not because I was guilty, but issued like the one to Captain John Davis and to Jefferson Davis, president of the Confederacy, and others.

But this contention on the part of the Commonwealth in regard to the pardon and to my attempted escape, is like other assertions in other things. Whatever I do and wherever I go, the prosecution construes it into direct and conclusive evidence of guilt. When I went to Louisville and locked my office door, on former trials they said it was almost positive proof of my guilt. If I had failed to lock it, it would have been more positive. When I told Burton in my office that I would withdraw from the meeting and have nothing further to do with it, if violence was talked of, or contemplated, the prosecution says that I did not mean it; and when I called Todd to talk with Youtsey and persuade him from any unbecoming conduct, they say that I didn't mean it; and when I told the men who came down with the large crowd of people in front of the depot in Barboursville, that they must keep sober and conduct themselves in such a way as to cast no discredit on our end of the state, the prosecution says the reason of that was, I wanted them to keep sober in order that they might murder their fellow man more effectively. Mr. Hendrick told you that I perjured myself on the witness-stand because I testified with calmness and deliberation. What would he have said if I had testified otherwise? He said that I was guilty because I left my office for Louisville the Tuesday morning before the tragedy, and that I am doubly guilty because I returned to my office after the shooting. Whatever I do, gentlemen, it is twisted into damning evidence against me, and when I accept a pardon and try to escape to the mountains of Kentucky, they say that it is positive proof of my guilt, when you or any one else, who values his life, would have conducted himself as I did, under the circumstances that existed.

And, gentlemen, there is proof in this case that rebuts all presumption of guilt that might arise in the minds of the most skeptical, either from my accepting a pardon or from my attempting to escape, and that is, gentlemen, that at all times and under all circumstances I have maintained my innocence, not by my words alone, but by my actions as well. Murder will out, gentlemen; and had I been guilty of the murder of Goebel, I certainly would never have appealed my case

after the first jury had rendered a verdict of guilty and sentenced me to the penitentiary for life. We all know that the secret of murder can not be kept.

Daniel Webster, in one of the finest criminal speeches of his whole life, said, concerning the fact that murder will out: "Such a secret is safe nowhere in the whole creation of God. There is neither nook nor corner where the guilty can bestow it and say it is safe. The human heart was not made for the residence of such an inhabitant."

And it is in accordance with the experience of mankind that murder will out. I have maintained all the time, and now maintain, that the murderer of Senator Goebel will be known. Could I have afforded it, had I been connected with it in the slightest, to appeal my case after having been given a life sentence the first time? Could I have afforded to appeal my case after I had been given a life sentence the second time? Suppose that one of you, gentlemen, had been guilty of the awful crime of assassinating the leader of the Republican party, and suppose that you were being prosecuted in a Republican county, before a Republican circuit judge, with a Republican sheriff to summon the jury, with a Republican prosecuting attorney to prosecute you, with the resources of the great Commonwealth of Kentucky at his disposal, and with one hundred thousand dollars laid at his feet to unearth the murderer, with detectives prying into every nook and corner of this Commonwealth and into the secrets of every home within its confines, and people daily making confessions for immunity—I ask, if you had been guilty of the awful crime of assassination under such circumstances as these, and had been given a life sentence, I ask you if you would not have accepted imprisonment with open arms and risked your friends to come, at some time, to your relief?

If you were guilty, gentlemen, you would not know on what day that guilt would shine forth like a blazing sun; you would not know at what hour your connection with the murder would become known to the world, with one great political party, to say the least of it, trying to make known your guilt; with the resources of the state and one hundred thou-

sand dollars and droves of detectives working to that end. You would not know on what trial your life would pay the forfeit of your connection with that murder. I ask you, gentlemen, as sensible men, would any of you have appealed your case the first time under the circumstances that I have described? Would you have appealed it a second time? No, gentlemen, you would not. No one of you would, had you been guilty. Neither would I, gentlemen. I would have been glad to save my life and look forward to some time when my friends could come to my relief and secure my liberation.

Put yourselves in my place. Suppose, Mr. Booth, you were the defendant in this case instead of me. Suppose that you had your case in the court of appeals the second time, November thirtieth, 1902. Suppose on that day Henry Youtsey had given a statement to the country that he was willing to go on the witness-stand and tell all he knew. Suppose that you were alleged to be implicated with him in the murder of Senator Goebel. Suppose the prosecution had always maintained that the fatal shot was fired from your office and that you were instrumental in having it fired from there. Suppose you had been convicted on two former occasions by two juries, on the theory that Youtsey and others had secured the key from you or your brother, as a means of entry to the office. Suppose the minority of the court of appeals had accepted that view of it, and handed down dissenting opinions in your case. Suppose that most of the testimony against you was the testimony of star-witnesses, swearing for immunity. Suppose you knew that the prosecution had always been able to prove by such men any statement it desired.

Suppose that the members of the court of appeals, that had been politically your friends, had changed and had become politically your foes. Now, I want to ask you this question: If you were implicated with Youtsey in the murder of Senator Goebel, and he was declaring that he intended to take the witness-stand and tell all about it, wouldn't you have ceased to fight your case at that moment? Wouldn't you have had your lawyer go before the court of appeals

and dismiss your case and have gone to the penitentiary, and possibly have saved your life in a future trial?

Wouldn't I have done that? Wouldn't any one with a spoonful of brains in his cranium have pursued that course? Or wouldn't I have had my lawyers, by dilatory tactics, push my case over into the January term of the court of appeals at the beginning of 1903, when it became Democratic, and let those Democratic judges affirm the decision in my case, and go to the penitentiary? No public censure would have come to me, because, ostensibly, I would have fought my case to the bitter end. I did not do that; I am not guilty.

I am not guilty; my conduct proves that. And if your verdict in this case should be, "We agree and find the defendant guilty," if, by your verdict, you should blight and ruin the life of one of your fellow citizens, let me say to you now, gentlemen, that you will regret it to the longest day you live. I am innocent, gentlemen; some day the world will know it. But when your verdict is rendered and you are dismissed and discharged from this case, if it should become known to-morrow that your verdict was no less than murder, your power to undo the wrong and palliate the crime you would commit would be beyond your reach. You can neither correct nor modify it. All the sleepless nights you would spend over it could not alter it; all your bitter tears of regret could not change it. Your sobbing, aching hearts and stinging consciences would go with you to your grave, and still you would have done that which your suffering could not change, your agonies could not alter.

But, gentlemen, you will not render such a verdict. The facts proved in this case do not warrant a conviction. The law does not authorize it, and you are going to give me my liberty. The scenes of this trial are rapidly coming to a close. You and I will part, possibly never to meet on earth again. I never cast my eyes on you until the trial began; I may never see you more. At the furthest, gentlemen, we shall all soon be laid in the icy arms of death. We owe it to ourselves, to our families and to our country and to our God, to be honest men while we live. Whatever fate befalls us,

let us do our part of the duties of life and meet all its responsibilities like men. Let not our pathway, while we live, be filled with cruelties to the helpless, wrongs to the unfortunate and injustice to the innocent.

We are a band of brothers, sent here to earth to remain but a little while, to fitly prepare ourselves for complete enjoyment in the world to come. I know of no better way to prepare for the happy realms above than by doing good to others here below. You have it in your power to lead an innocent man to the gallows, to prison, or to liberty. And, remember, that the good you do to others, your uprightness of life, your stand for humanity and truth, will follow you to commend you. Whether in the future you roam over distant countries or sail over unknown seas, or whether you spend the remainder of your days on earth here amid the best civilization, the most hospitable people upon which the sun of heaven has ever shone; wherever you may be and in whatever circumstances placed, if you do this day's business as justice and innocence and truth demand that it should be done, you will always look back upon it as the most glorious day's work of your whole life.

When the burden and cares of many years and the frost of many winters and the decrepitude natural to old age are bringing you nearer to the dark waters of death; when you have retired from the battles and trifles of a busy life; when you are caring less about the politics and policies of this world, and more about your safe arrival upon the shores of the next; when the mysteries surrounding this awful murder shall have cleared away and the guilty be known, and the innocent are relieved of suspicion; when it is known to this world, and it will be known, that an innocent young man was torn from a position of honor to which his fellow countrymen had elevated him, and driven from place to place like a common criminal in shackles and chains and forced to pine away his young life in a prison cell with worthless negroes, crawling lice and creeping vermin; then, gentlemen, your hearts will bound with the joy of youth, and your good names will be heralded over the earth as being just men; men whose oaths and whose sense of justice and devotion to

duty lifted them above the mad passions and prejudices of the hour, impelled them to render a verdict in accordance with the law, the evidence and justice. It will be a verdict, gentlemen, of which your children and grandchildren will be proud; one that our country will point to with pride. It will bless you and yours as long as life lasts, and be a passport into the realms of bliss beyond.

And I know that you are going to give me my liberty, gentlemen. I feel it in the very air. I see it in the faces of this vast crowd of listeners whose very hearts are bleeding because of the agonies I have suffered and the wrongs I have endured. Witness how their tears are flowing because they live in a country where a crime worse and blacker than the awful crime of assassination has been inflicted upon one of their fellow men, under the forms of law and in the name of justice. I feel that you, gentlemen, will say by your verdict, that you deplore the wrongs of the past; and that you will put it beyond the reach of mortal man to repeat them in this case. I believe you will say that while Kentuckians are the quickest to do wrong they are the soonest to repent.

Gentlemen, there are too many men swearing for immunity in this case; too many swearing for money; too many detectives; too many star-witnesses. I had hoped to discuss at some length the star-witness in this case, but I have already taxed your patience too long. I wanted to tell you, when Colonel Campbell, with whip in hand, took a front seat in the band-wagon of safety and began to conduct the course of these proceedings, and ordered that all who would ride with him should have everlasting life, so far as he was concerned—a safe journey through the inviting fields of freedom, and a continued feast on that one-hundred-thousand-dollar reward fund—and that all who failed to take advantage of this golden opportunity should meet with death and destruction, how Golden took early advantage of this blessed opportunity, climbed over the front wheels of the band-wagon of immunity, and took a soft seat by the side of his savior, Colonel Tom C. Campbell.

I wanted to tell you how Culton was led, on the arm of his brother-in-law, Ed Hogg, into the room of Colonel Camp-

bell, at the Capital Hotel, at Frankfort, and there told such a story as restored to him his liberty, his wife and loved ones. I wanted to tell you how Cecil found his way from California into the home of the Commonwealth's attorney, and from there to the grand jury-room, and from there to liberty, and, as arranged, came here to Georgetown and tried to swear my life away. It was my desire to tell you how Youtsey had begun making confessions within six hours after he was lodged in jail, and how he said at that time to Colonel Campbell: "*I never discussed the killing of Goebel with Caleb Powers.*" And how he afterwards changed that story when he had been kept on bread and water for eight consecutive days in a prison cell in the penitentiary at Frankfort. I wanted to tell you something of his pretended "fits," on his own trial, and how he tried to become a star-witness against me during my first trial; how he accepted a life sentence in the penitentiary for alleged complicity in Goebel's murder, and how, at all times, he had maintained his innocence to his own dear wife. I wanted to tell you something of how Golden and Culton and Cecil and Youtsey, according to their own statements, wanted to kill and murder, before Goebel's death, and how, now, they have pious longing in their saintly (?) souls to spread the truth broadcast over the land. I wanted to tell you with what "coming" appetites they have testified; how little they knew when they began testifying and how much they all know now; how they have given to the world new and revised editions of "all they know" concerning the killing of Mr. Goebel.

It frequently occurs that books of various characters are often revised, giving to the world the latest and best thoughts of authors on the subjects treated. But it is the first time that I have ever known of the sworn testimony of a witness in court being issued in so many new and revised editions. It has always been my idea that a witness was sworn to tell the truth, and the whole truth, on his first examination, and that he is supposed to do it. It has been my experience, gentlemen, that instead of one's memory increasing with age, it often becomes faulty and treacherous. It is the experience of humanity, gentlemen, that the further in point

of time events are removed from us, the more dimly we see them. Things that were clear and vivid when they occurred, become faint and shadowy by the lapse of time. But these star-witnesses furnish us a remarkable and peculiar exception to the rule that applies to all honest humanity. The further they are removed from the fatal and unfortunate tragedy of January thirtieth, 1900, the more vivid is their memory, the more useful their knowledge.

I would like to show you how Golden's alleged conversations always occurred with me when I was alone, except in two instances where he is overwhelmingly contradicted by others; how Culton's alleged conversations always occurred with me when I was alone, except in one instance, and in that instance we find him contradicted by Messrs. Page, Howard, Van Zant, Davidson and others; how Cecil always had his alleged conversations with me when I was alone, except where he is contradicted by Van Zant, Davidson, Page and others; how Youtsey always had his alleged damaging conversations when I was entirely alone; how Broughton had his alleged conversation with me when I was alone; how Noakes said he always talked to me alone. Is this not a remarkably strange state of the case, that these star-witnesses always talked to me when I was alone, and putting it out of my power to contradict their alleged conversations by others than myself?

And is it not stranger still, that Golden and Culton and Noakes and Anderson and Youtsey and Cecil and Broughton were the only ones to whom I confided my intention to murder? Is it not strange that, out of the number of prominent and reputable men with whom I associated at Frankfort, not a single one has ever been produced to prove my murderous plans? Is it not most remarkable that I did not converse with the leaders of the party and representative citizens about the way the contest should be settled — about the surest way for me to hold the office for which I was contending? Has it never occurred to you, as it has to all other sensible people of the country, that if I talked to Golden and Culton and Noakes and Anderson and others of like liver exclusively about the best way to settle the contest, I must have

been a fool of the first water? Does it not strike you, gentlemen, as being most peculiar that the only people in the whole state who had my entire confidence during these stirring times, were Noakes and Anderson, who are now confessed perjurers, and Golden, Culton, Cecil and Youtsey, who are now under indictment in this case, and swearing for immunity?

Is it not strange that the now pious Broughton recommended, as he says, his own brother as a suitable man to kill Senator Goebel before the tragedy, and at this trial had to be run down by detectives Harding and Griffin, before he could be got to the witness-stand to testify for the Commonwealth? There are reasons for all these things.

There have been too many detectives in this case; too many lawyers playing the part of detectives. There has been too much of an effort to convict some one more or less in politics, and too little attention paid to the prosecution of the real murderer. You know this policy was expressed by Colonel Campbell in his first speech in my case, when he said: "Small gratification would it be to those looking for revenge, if such there were, to have a 'wretch kern' from the Highlands convicted and hung. Such a man, if necessary, should be turned loose to the end that the conspirators who procured the cowardly deed done might be convicted." You see, gentlemen, they have publicly expressed that they cared nothing for the "little fishes;" that it was their desire to convict more prominent men.

Look at this spirit of persecution, together with the fact that detectives have played a most conspicuous part in all these trials, and we are not astonished, or should not be, at the prosecution proving alibis for such men as Johnson, or the production of so many star-witnesses — such men as Noakes, Anderson and Weaver. We need not be surprised that such a man as Golden is to-day enjoying his liberty; that Culton is a boon companion of those whose duty it is to prosecute him; that Cecil is getting his liberty for his testimony, and that Youtsey expects his feet soon to walk on freedom's soil for his services here as a witness.

There can be no doubt, gentlemen, that the detectives

have played a most important part, and a most damnable part, in the production of the evidence in this case. You remember Colonel Campbell said in his first speech to the jury in my case: "Detectives were called in, but they were baffled like the hounds in the pursuit of the fox which jumped to the sapling over the precipice, and then under the ledge of rock." He says that in that dilemma Mr. Franklin said to him one evening: "You are not known in Eastern Kentucky; go there." There is no doubt that he went there, gentlemen, for he met Robert Noakes at Big Stone Gap, under the *nom de plume* of Kleinmeyer. Mr. Campbell said in his speech: "Men whose time was worth five dollars a day worked in the mines of Bell County for less than one-fifth of that sum for the purpose of accounting for their presence in that county. One man painted fences and rocks in Laurel County with signs, and gave away hundreds of bottles of medicine for the sole purpose of accounting to such fellows as Jim Sparks and Jim Howard and others of like kidney as to why he was in that county."

And, gentlemen, we do not have to rely upon Colonel Campbell's statement that detectives have been very busy from the beginning of this prosecution. You remember that Golden testified that Tom Cromwell, a detective, who had been up in Knox County, came to the Capital Hotel, in Frankfort, about the second of March, 1900, and wrote Golden a note to come over to the Capital Hotel. You remember that Golden told you that, in response to the invitation to meet Tom Cromwell at the Capital Hotel, he presented himself in person, and the next morning, at the early hour of five o'clock, he was speeding away over the country to the historic city of Cincinnati in the arms of his savior, Colonel Tom Campbell.

You remember when the theory of this case was being formulated, the theory that the shot was fired from the office of the secretary of state, we find detectives playing important parts in that matter. You remember Mr. D. Mead Woodson, that expert gentleman and expert witness. These expert witnesses are always a remarkable set of fellows; they can get out here in the streets of Georgetown and measure

a cow's track and tell you the price of butter in New York City. And when this man Woodson was down at the hackberry tree proving to a mathematical certainty, with his little surveying pins and a yarn string, that the shot that killed Goebel was fired from the office of the secretary of state, he told you that Robert Harding and Dee Armstrong were present on that occasion. Who are Robert Harding and Dee Armstrong? They are detectives; the paid puppets of the prosecution who have lent their gallant services, sacrificing services, to the unearthing of the guilty in this prosecution. When Golden was preparing to confess; when he was getting ready to turn state's evidence, we see the finger of Detective Tom Cromwell in the matter. When the bullet was found in the hackberry tree we find Dee Armstrong and Robert Harding officiating on that occasion. You remember the testimony of that most charming and most winsome lady, Miss Ella Smith by name, of the town of Barboursville, whose bewitching manner and seductive smiles captivated the hearts of all. You remember that Miss Ella Smith, who was a witness for the prosecution, told you that Tom Cromwell wrote out her statement for her in Barboursville, and she committed it to memory and recited it for us. She recited it well.

Detective Cromwell swore out a warrant for my arrest; he swore out a warrant for the arrest of old man Davis. Detective Russell took a number of identifying witnesses to see Jim Howard. A number of them assisted in my arrest at Lexington. So you see, gentlemen, that detectives have been swarming the state like a drove of hungry vultures. You find them in the Capital Hotel when Golden confesses; you find them at Barboursville before he confesses; you find them at the hackberry tree when a block of wood was taken out of the tree; you find them present when the block of wood was opened; you find them in Cincinnati when Golden first confessed; you find them in Lexington with him after he confessed; you find them swearing out warrants of arrest; you find them everywhere. There are too many detectives and too many perjurers in this case. There are too many men who have their arms up to their elbows in that one-hundred-thousand-dollar reward.

Do you want to help distribute that money, gentlemen? Do you want to become co-partners in that affair? If you do, the opportunity is yours. You have an earnest invitation on the part of the Commonwealth. If you want to help distribute that money you have the privilege; five thousand dollars is offered for my conviction. You make it possible for those hired detectives to get their share of the spoils; for if the detectives do not get the five thousand dollars offered for my conviction, who does get it, gentlemen? No part of the five thousand dollars offered for my scalp goes for the purpose of bringing the witnesses here, either for the Commonwealth or the defendant. The state pays for the bringing of witnesses here for the Commonwealth, and the defendant has to pay the expenses of his own witnesses. It is not for the purpose of keeping witnesses of the Commonwealth here; they are allowed one dollar for each day they stay here. It is not for the purpose of paying their mileage or their way to the train. The law allows them more than enough for that. It does not go to the paying of lawyers in this case, for the law that set apart the appropriation says that none of the money is to go for the payment of the lawyers. It is not for the purpose of paying Mr. Franklin here for his services. He is allowed a certain salary, and is paid by the state. It is not for the purpose of paying you, gentlemen, for your services. You are allowed your per diem by the law of the state.

Then, to whom does it go? It must go to somebody. It must be paid for some purpose. There is no stipulation in the law appropriating this enormous fund, saying that any part of it shall be to perjurers and suborners of perjury. But such people will lay claim to that money. Did not Detectives Dee Armstrong and Robert Harding tell you from this witness-stand that they expected to lay claim to this money if I am convicted? The detectives who have furnished the proof in these cases, and those who have sworn to lies for pay, will lay claim to this money. Do not be deceived about it. They are now claiming it. Suppose Campbell should say to the detectives that he needs certain testimony; Harding and Armstrong would give ten witnesses ten dollars each, in addition to the Commonwealth's paying them a dollar a day and so much

mileage, to come and testify to certain sets of facts. It would not be good policy for any witness to swear to too much. That would not be skilled perjury. It would be bunglesome subornation. Here you have these ten witnesses swearing to certain statements for the sum of one hundred dollars. That is a small amount, but the evidence of ten witnesses is considerable testimony; two hundred dollars at that rate would get twenty witnesses. That is not much of five thousand dollars.

You ask: Do you mean to say that witnesses can be bought so cheap? I answer: Yes; some of them can, but not all. It takes more for some. But you can put it down, gentlemen, that nearly every man who sells his vote at an election would sell his testimony. You know that there are plenty of these. You know that there are more of them than the mass of humanity supposes. So you see how easy it is to buy testimony when you have the money. But one says: It looks as if some of them would be caught up with. And so they have been in this case. Weaver was caught up with; Anderson was caught up with; Noakes was caught up with; Davis Harrod, at Frankfort, was caught up with, and is no more a witness in these cases; D. Sinclair, the man who forged the telegrams at Frankfort, was caught up with and is no more used as a witness in this case.

Yes, it is true that some of them are caught up with, but the smooth suborner of perjury knows better than to do it that way. The suborner has the perjurer meet you on the road somewhere or be with you alone somewhere. Golden says that we always talked alone when we were talking about private matters. The smooth suborner has no one present but you and the perjurer, and he has him say that while you are with him at a certain time and place, you made such and such a statement. You have to admit being with him at the time and place. There is no one to help you out of your predicament; no one to deny for you that you made such a statement; no one to contradict the witnesses against you except yourself; no one to contradict them in this case except myself. Then, of course, the Commonwealth argues that my own testimony sustains the wit-

ness against me, and that, of course, I am trying to swear myself out. There is no way to contradict the perjurer save by my own testimony.

Such has been the testimony of all the stars against me. Such has been the testimony of Anderson and Noakes and Golden and Culton from the very beginning; such is the testimony of Youtsey and Cecil. Detectives and shrewd lawyers know how to prepare such testimony. That is the business of, by far, too many of them. Culton is a lawyer himself. He knows how to fix his. Golden's brother is a lawyer; he knows how to fix him. Colonel Campbell could suggest to Golden or Culton that a certain bit of testimony was needed and for him to try and remember it. They are in the remembering business. It stands them in hand to remember well. They know it. It needs no detective work to encourage Golden and Culton to remember well. It needs no offer of money in the event that I am convicted, to spur them up to their best as perjurers. There are other incentives for them.

Then, you ask, does the Commonwealth's attorney indorse it all, and is he a party to it all? I answer, no. I have known of cases where he has turned off would-be perjurers. The detective goes into the neighborhood of the witness. He suborns him. He then writes down to Mr. Franklin that a certain man would make a good witness for the Commonwealth. Mr. Franklin has him summoned either before the grand jury or as a witness in some of these cases. The witness tells his story. He makes a good witness, and Mr. Franklin puts him on the stand. That is a part of the evidence of conviction. And after the conviction is had, the detective will come forward, claiming the five thousand dollars for the discovery of the testimony that leads to the conviction.

Oh, gentlemen, be not deceived in this matter. They are already claiming it. It is a matter of current history, gentlemen, with which you are all familiar, that Dee Armstrong and Robert Harding of Louisville, who have been the paid puppets of the prosecution in the investigation of clues, and who have attended every trial of my case, and who are here

now, have already put in a claim for my former conviction, alleging that they furnished the evidence with which to do it. You remember the fiscal court of Franklin County offered one thousand dollars' reward for the arrest and conviction of Senator Goebel's assassin. Detectives Armstrong and Harding have put in a claim for that money, and allege they furnished the evidence upon which Youtsey and Jim Howard and myself were convicted. They also have put in a claim for five thousand dollars for the conviction of Youtsey. They have been here on the grounds marshaling and training their witnesses, and now await your verdict, in the hope that they will be well paid for that marshaling and training. Did not Armstrong tell you that? The detectives are waiting for that five thousand dollars' reward, gentlemen; that is the reason why they have bought so much testimony. They would purchase it against you as readily as they do against me, if there were as much in it for them.

Be not deceived about it. Do you think there is enough evidence in this case to convict me? Is there a single man on this jury who thinks it? If there is, I want to say to that man if he will let Colonel Campbell suppose two things, he can convict him of the murder of Mr. Goebel. If you will let him suppose that you were an active partizan Republican in the campaign and contests of 1899 and 1900, and that you went to Frankfort a few days before Senator Goebel was killed—that is all that is necessary, these two things. You may say you do not understand what your being a Republican or going to Frankfort would have to do with the killing of Mr. Goebel, or how you could be convicted for that. Let us see.

In the first place, he would charge, by indictment, a Golden, and a Culton, and a Youtsey, and a Cecil, who reside in your neighborhood, or who were thrown with you in the transaction of business in the winter of 1899 and 1900. And you have got Goldens and Cultons and Youtseys and Cecils and Broughtons in your community, gentlemen. Be not deceived. There are men in your neighborhood who, if they were indicted for an offense like this and could get their liberty by testifying against you, would swear to anything they were told

to swear. You know that. There are men in your community who would swear your life away for even a small slice of one hundred thousand dollars. You know that.

Let me show you how you could be convicted for killing Mr. Goebel, by letting Colonel Campbell suppose the two things of which I have just spoken. He would prove by some Wharton Golden whom you had working for you on your farm, that you were an active and violent Republican. This would be known to be true; this would help strengthen his testimony against you. He would prove by him that while you and he were alone together on the farm and about your place of business, you had said to him that Goebel ought to be killed; that if you were up at Frankfort and no one else would kill him, you would kill him yourself. That is what Finley Anderson swore against me. He would prove by him that you discussed plans to kill Goebel in the Capital Hotel, on the streets of Frankfort, and from the office of the secretary of state. He would prove by him that you said you would be willing to kill off enough Democrats in the Legislature to make a Republican majority, and that you also indorsed the killing of the Democratic members of the court of appeals. He would prove by him that you said out at your barn one morning that if things didn't settle up at Frankfort pretty soon, you intended to go up there and make use of a few Colt forty-fives or a Marlin rifle.

He would prove by Culton that he lived in your neighborhood during the contests of 1899 and 1900; that he often passed your home, and that you and he had frequent talks about the contest at Frankfort, and that you said to him you believed that if a large body of mountaineers would come to Frankfort with their guns and either kill enough Democrats to make a Republican majority or kill Mr. Goebel, the contest would end favorably to the Republicans; that you said that when Goebel was dead and in hell the Democrats would not have another man who could hold them together. He would prove by him that you and he had come here to Georgetown about the middle of January, 1900, and that you showed him a letter you had written to Governor Taylor inclosing twenty-five dollars to help defray the ex-

penses of the mountaineers to Frankfort and advising their coming, and that your judgment was that when they got to Frankfort they should give the Legislature thirty minutes to settle the contest, and if they didn't do it, kill the last damned one of them.

He would prove by some Broughton in your county that you approached him one day to find out who, in his judgment, would be a good man to kill Goebel, and that he referred you to Cecil and Steele. He would prove by some Cecil and Steele in your neighborhood that you did approach them and try to get them to go to Frankfort and kill Mr. Goebel, and discussed with him how it could be done from the office of the secretary of state. He would prove by Youtsey that he lived in your neighborhood before he went to Frankfort; that he knew you well; that at the time of the governor's contest he met you in the hallway of the Executive Building at Frankfort a day or two before the killing, at the time you went to Frankfort, and that you said to him you believed the only way to settle the contest was to have Goebel killed. He would prove by him that he fully indorsed that sentiment, and said he had been trying to do that for several days and suggested that he now had a slick scheme by which he could go into the office of the secretary of state, pull down the window blind, shoot Goebel from that office window and then run down the stairway, and that nobody would ever know it. He would prove by him that you indorsed that plan and pulled out of your pocket fifty dollars and gave it to him and told him to carry it out, and that you would leave the details of it to him, and that you would go in and see Taylor and have him call out the militia to protect Youtsey and others after the killing.

Take this state of the case, gentlemen, and why wouldn't I have a stronger case against you than they have against me? The mountaineers came to Frankfort on your advice; the shot was fired from the office of the secretary of state upon your indorsement; the militia was called out upon your suggestion. How would you get out of it, Mr. Rice? Golden, Culton, Cecil, Youtsey, have testified that there was no one present at the time each of them had their alleged talk with you.

You could only contradict them with your own testimony, and the prosecution would say that you are the defendant in the case and swearing for your liberty and could not be believed, and, besides that, they would say your own testimony corroborated the testimony of all these witnesses against you. They would say that you admit having Golden working for you on your farm and admit being with him at the time and places he alleges, and that the only thing you deny is the damaging part of the conversations; that you substantiate the testimony of Culton by admitting you did frequently talk with him at your gate during the contest, and that you admit coming to Georgetown on the occasion testified to by him. They would say that you corroborate Broughton by admitting that he lived in your neighborhood, and that he did have an opportunity of talking to you, and by the further fact that Cecil and Steele say you approached them on the mission you talked to Broughton about. They would say that you corroborate Youtsey by admitting you were at Frankfort at the time he testified to, and by the further fact that the shot was fired from the office of the secretary of state and by the still further fact that the militia was called out after the shooting.

If the jury who tried you should give full faith and credit to the testimony, there is no reason why you or any other man in the community could not be convicted with one hundred thousand dollars and a horde of unscrupulous detectives to buy up the proof. Golden, Cecil, Youtsey, Culton and Broughton say they had these talks with me, and that no one was present but themselves and me. I never had the alleged talks with these men. The Commonwealth is after a conviction in this case, and Dee Armstrong and Robert Harding are after the money. They will have rival claimants. Other detectives have been active. Detective Griffin, of Somerset, will be a formidable contestant.

By your verdict, gentlemen, do you propose to further this nefarious work? Do you propose to be a party to taking away the liberty of an innocent man? Answer me that, gentlemen. And you will be a party to it if you bring in a verdict of guilty, because without such a verdict they can not get the

money. As a citizen and taxpayer of this Commonwealth, do you desire to plunder the treasury of this state, in order to get the money to pay irresponsible detectives to suborn witnesses to swear away the lives of one of your innocent fellow citizens? The opportunity is yours, gentlemen. The Commonwealth invites you to embrace it. Will you do it? How can you gentlemen bring in a verdict of guilty when the foundation stones of this prosecution are composed of perjurers? How can you bring in a verdict of guilty when you see that all the material testimony in this case received its being and was brought to fruition at the hands of conscienceless detectives and other suborners or perjurers?

Two juries have sat upon this case before and have said by their verdicts that I am guilty. This was at a time, gentlemen, when the amount of perjury in this case was not so well known as now; finally my case was reviewed by a higher court and a new trial granted. Suppose that you should render the same verdict, and suppose I would be compelled to abide by that verdict, and it should be found out, after all, that I am innocent, and it will be found out; suppose that in the meantime my frail constitution breaks down under the strain which I have been forced to bear for the past few years; suppose that my vitality is sapped and disease takes possession of my vital forces; suppose that my power of usefulness is all destroyed; suppose that in the meantime my aged mother could no longer stand the strain of witnessing the awful injuries done her son, and her soul takes its flight for the world of spirits, following that of my poor father, who died but a few months ago. And when the facts surrounding this murder become known, as they will become known, and the world knows that I had nothing more to do with the murder of Senator Goebel than the jury which tried me, or had Mrs. Surratt and others, who were wrongfully convicted for alleged complicity in the assassination of Abraham Lincoln, how can you, gentlemen, live amid the ruin that you have caused? How could you claim as a home the state whose fair name you have tarnished? How could you live in a country whose fair name you have disgraced in the committing of judicial murder? How could you look your fellow men

in the face, attend your churches and hear the gospel of justice and humanity and mercy and goodness preached?

Oh, gentlemen, the awful sin of a conviction in this case, if you so far forget yourselves as to commit it, will always be a crushing weight upon your conscience. It will prey upon you day by day and your slumbers will be disturbed by it at night. In vain will you wander this world around in seeking a place of painless rest. The ghost of your awful crime would be with you to upbraid you with a sense of your dreadful wrong. And when your stay in this world is over; when you have traveled through the dark valley and shadow of death and crossed the barren peaks of eternity, the acts that you have done here will follow you and be a witness against you in the great day of judgment, to tell the wrongs and rehearse the agonies you brought to a poor innocent and helpless prisoner here on earth.

But, gentlemen, I believe you are going to do right in this case. You can not give weight to perjured testimony; you can not credit men swearing for immunity; and if you are not convinced of my innocence, you can not be convinced of my guilt. And I believe you are going to give me the full benefit of the doubt which this most remarkable and most mysterious case has left to us all, as you have taken a solemn oath that you would do; and when you do that, gentlemen, I shall be acquitted and you will have discharged your duty fully to me, to your conscience and to your God. And when you, gentlemen, are called to give account of your stewardship here upon earth, the deed of your verdict of acquittal in this case will stand by your side and plead, like an angel, trumpet-tongued, for your acquittal and your deliverance. You may talk of the ruin of homes brought about by strong drink; talk of the pains and pangs of poverty; talk of forfeited friendships and trusts betrayed; talk of the misery of the witness who has sold his honor for gold or blackened his soul with the awful crime of perjury; but none of these compares in wretchedness with the juror who fails to discharge his duty when the life of a fellow citizen is involved.

I must soon close. I have done my best to make clear the facts in this case. I know that my words have been weak. I

shall have to trust to you to do better work. I am not guilty. Something has been said by the prosecution about my lawyers begging for mercy. No, no, Mr. Franklin; no, no, gentlemen of the jury, I am not begging for mercy in this case; I am asking for justice alone at your hands.

But speaking of mercy calls to my mind the German legend that describes man in his creation. It seems by that legend, that at the time the Almighty decided to make man, He called his attributes, Truth, Justice and Mercy, before Him and questioned them concerning it. To Truth, He said: "Shall we make man?" And Truth answered and said: "Make him not; he will destroy Thy statutes." He then turned to Justice and said: "Shall we make man?" And Justice said: "Oh, Father, create him not; he will destroy Thy statutes, bring want and misery to light, and bathe his hand in human blood; Father, create him not." And Mercy, kneeling at the throne, answered: "Oh, create him, Father, and I will follow him wherever he goes; by his errors he shall learn wisdom, and at last I will bring him back to Thee." And man was created at the behest of Mercy.

And whatever may be said of the other noble attributes of man, there is none that so fills his life and the lives of others with joy while he remains here on earth; none that so prepares him for the Great Beyond. The Angel of Mercy stood by the side of Abraham Lincoln in every act of his public and private life, and whispered: "Be merciful, be merciful." And he was merciful.

When Robert E. Lee, great man and greater statesman that he was, surrendered his army at Appomattox in good faith, he would not let his men go home and keep up a guerrilla warfare. Upon his decision as to what should be done rested the peace of the South and the future relation of the states. He was a soldier, a patriot, a statesman, and, above all, the noblest handiwork of God, an honest man. He was not blinded to his duty by the hot blood of revenge and war still rankling in the breasts of many Southern gentlemen. He was not moved by the passions and prejudices of the hour. He stood like a stone wall for the ultimate good of the South and the glory of the Union. Upon his shoulders rested the

destiny of the Southland, and it took a great man to say to his men: "Go home; resume the vocations of peaceful lives; be as faithful to the Republic as you have been to the Confederacy."

And when certain men wanted Grant to take steps to arrest Lee and charge him with treason, he said in no uncertain tones that Robert E. Lee fought for the South because he thought it his duty; that he was loyal to principle and true to honor and that such accusation should not be made.

Lee and Grant were patriots. They stood upon the sublime heights of manhood and duty. Their judgments were not warped. Their devotion to duty could not be affected by the appeals of partizans. The prosperity and the welfare of our country depended upon noble and God-like action on their part. No particular section of the Union to please, but a country to serve. And, gentlemen, I believe that you will climb the sublime heights of duty in this case, with no set of men to please, but your country to serve.

Men, I must soon close. I am going to leave this case in your hands. I am not guilty of that with which I am charged. The decision of all the juries in all this world, the testimony of all the witnesses in this land, can not make it so. The fact that I am innocent is unchangeable. Some things change and some things never do. You, gentlemen of the jury, and the interested spectators in this court-room, are all passing on to the time when your existence will be no more. You will soon have played your part in the great drama of life, and you will soon step from the stage of action over the River Styx into the shadowy realms beyond. All the material things change, but there is one thing that all the witnesses in all this world can not change, and that all the juries in the world can not alter, and that is that I am innocent of that with which I am charged. That fact will live to the end of time. It is as changeless as eternity.

These mad days, these prosecutions, will soon be over. Any temporary advantage that may be given to either political party by a verdict of guilty or a verdict of not guilty will soon pass away. Posterity will judge us by the rightfulness or the wrongfulness of our course and conduct. And I feel, gentle-

men, that the angel of justice has been standing upon the very threshold of your hearts since this trial began and saying almost aloud to your consciences: "Do justice to this oppressed young man."

The prosecution expects you, gentlemen, to close your eyes to the facts in this case, and expects you to convict me by reason of your politics and what they have proven against others. You remember, gentlemen, a great deal of the time of this court and your time has been occupied in listening to various witnesses proving what others did. It is unfair to you and unfair to me to attempt to have you convict me on the actions of others. I have suffered a great deal, gentlemen; God alone knows how much, but it is not for what I have done, but for what others have done.

You know I have suffered; I have been in prison nearly four years. You, gentlemen, have been engaged in this trial not quite four weeks. You have been in a kind of prison since this trial began. You have, in a measure, been robbed of your liberty. You have been kept together and had an officer over you; have been forced to stay together and eat at the same table at the same time and to sleep in the same room. I know that the days have hung heavily on your hands, and that the nights have been long and wearisome. I know that you have been eager to get back to your homes; been anxious to be with your wives and children. They, too, have been thinking the time long and are keeping eager eyes to see you approach; they will meet you with open arms and tender caresses.

It has been a long time to them since they saw you; it has been a long time to you since you saw them; but how short a time compared with over three years, with twelve long months in each year, and each month having thirty long days and thirty long and weary nights, in a prison cell, with the trash of the earth for your daily companions, and with iron bars and steel walls to mock your very existence. There, in a lonesome cell, filled with foul air and creeping vermin, and separated from family and friends, hunted up and stared at by every vulgar curiosity-seeker in the land; classed and treated as a criminal and branded as an outlaw,—such an existence

is a living death; it is a million deaths. General Reuben Davis, of Mississippi, once said: "A prison cell has horrors for me that the regions of the damned have not. The one is the inhumanity of man to man; the other the just punishment inflicted by an All-wise God for the infraction of His decrees."

And should any of you gentlemen be tempted to render a verdict of guilty, and consign me to a living tomb for life, you should weigh well its consequences, for as has been stated, the first, the middle and the last consideration for a jury is the consequence of its verdict.

I can see my poor mother now, who was unable, by reason of physical infirmities, to attend this trial. She is sitting in her distant home, with a face sallow, wrinkled and careworn from the responsibilities of life and the worries and troubles caused by the unjust prosecution of her son. With a frail and trembling hand, she moves back the white hair from her sorrow-ridden brow. She casts her waiting, watery eyes toward the scene of this trial and pleads with you, though far away, to spare her son the burdens of further trials and dishonor. She pleads with you for justice to her son. She begs you not to be frightened away from your plain duty by the cruel invectives heaped upon his head by these gentlemen in the heat of argument. She implores you not to blot out the good name she has earned for her children; not to blacken the name of her home and family by a verdict of guilty; not to bring into disrepute and dishonor the name of her dead husband and his offspring; not to hold her up in shame and blight the fondest hopes of her heart; not to scandalize the evening of her life by throwing at the feet of her son the commission of such an awful offense, when she knows that he could not be guilty of such a deed.

She beseeches you to be led alone, in your consideration in this case, by the lamplight of duty, and not be tempted to outrage yourselves and the innocent by political bias, partizan feeling or party advantage. She begs you not to send her to an early grave in shame and dishonor; not to cut her son down in the days of his youth; not to extinguish the dearest hope of her heart; not to erase every hope of happiness for her

and for him; not to bring down her mourning age into a grave of despair; not to take from her that which is dearer than life itself, and put upon her more than she can bear. She asks you not to reward liars, nor put the badge of respectability upon the brow of perjurers by your verdict; not to feed the greed of men upon the life-blood of her son, or upon the vitals of our Commonwealth; not to walk ruthlessly upon broken homes and broken bodies; not to poison or kill her peace on earth and blight and ruin her confidence in men; not to murder your own souls and smite your own consciences.

This is the speech my mother makes to you. My words are barren and weak in conveying to you her message, but I have done my best and by your interest in this case you seem to say: "Stop. Speak no more. Let us have this case. Let the work of justice begin, for it has long been delayed. Stop, that we may right this wrong at once. Speak no more, but give us an opportunity to tear the shackles from your limbs, take the pallor of the dungeon from your cheeks, and restore you to health and send you home to your mother's fireside."

And my prayer is, gentlemen, that the Giver of Light may remove the mystery surrounding this case and reveal the truth to you as it is. May He point out to you your duty and give you strength to do it—yes, to liberate the suffering innocent and send an outraged boy back to the country he loves and to the countrymen who love him.

I thank you, gentlemen, for your kind patience and indulgent hearing.

APPENDIX D

INSTRUCTIONS ASKED BY THE DEFENDANT, BUT REFUSED BY THE COURT

Scott Circuit Court,
Commonwealth of Kentucky,
Plaintiff,

vs.

Caleb Powers,
Defendant.

The defendant moves the Court to instruct the jury as follows:

A. No. 1. The Court instructs the jury that under the indictment and proof herein it must find the defendant not guilty.

B. No. 2. The evidence of an accomplice in this case is not sufficient to convict, unless the same is corroborated by other evidence tending to show the commission of the offense and connecting the defendant therewith, and the evidence of one accomplice or co-conspirator, does not and can not corroborate another accomplice or co-conspirator.

C. No. 3. Unless the jury shall believe from the evidence, beyond a reasonable doubt, that either H. E. Youtsey, Berry Howard, Richard Combs, James Howard or Holland Whittaker actually fired the shot that killed William Goebel, and that the same was fired in pursuance to and in furtherance of a conspiracy on the part of the defendant with the one so firing said shot, you must find the defendant not guilty.

D. No. 4. The defendant can not be held criminally responsible for bringing, or aiding others to bring, armed or unarmed men to Frankfort, unless they were brought there in furtherance of a conspiracy to kill William Goebel, or bring about his death; and unless the jury believes from the evidence, beyond

a reasonable doubt, that the bringing of armed men to Frankfort was in pursuance of a conspiracy entered into by defendant with others to kill and murder William Goebel, and for that purpose, you must find the defendant not guilty.

E. No. 5. Even though the jury may believe from the evidence, beyond a reasonable doubt, that the defendant conspired with others named in the indictment to bring armed men to Frankfort for the purpose of bringing about the death of William Goebel, yet unless you shall further believe from the evidence, beyond a reasonable doubt, that said Goebel was killed by some one so brought there, and in furtherance of said conspiracy, you will find for the defendant not guilty.

F. No. 6. The law presumes the defendant to be innocent of the charge against him, until every fact essential to his guilt has been proven, beyond a reasonable doubt; and it is your duty, if you can reasonably do so, to reconcile all the facts and circumstances proven in the case with that presumption; and if upon the whole case you have a reasonable doubt of his guilt having been proven, you must find him not guilty.

G. No. 7. Although the jury may believe from the evidence, beyond a reasonable doubt, that some one of those charged in the indictment as a principal fired the shot that killed William Goebel, yet if you shall further believe from the evidence that the person so firing the shot did so of his own malice and volition and not in pursuance of a conspiracy entered into by defendant with him for that purpose, or if you have a reasonable doubt on this point, you must acquit the defendant.

H. No. 8. Before the defendant can be convicted under the indictment, it is incumbent upon the Commonwealth to show, beyond all reasonable doubt, by credible evidence, that the shooting of William Goebel, from which shooting he died, was done by some person or persons, acting under the advice or counsel or command or encouragement or procurement of the defendant. And although the jury should believe from the evidence, beyond a reasonable doubt, that the defendant in fact advised generally the commission, in certain contingencies, of acts amounting to a violation of the law, yet if the said shooting was done by some third party, of his own mere

volition, hatred, malice, or ill-will, and not materially influenced, either directly or indirectly, by such advice or counsel or command or encouragement or procurement of the defendant, or if he was actuated only by the advice of others not charged, and for whose advice the defendant is not responsible, the jury should find the defendant not guilty.

I. No. 9. The defendant being indicted as an accessory before the fact to the murder of William Goebel, you can not find him guilty as such, unless you believe from the evidence that the person who did the killing has been identified and his guilt proven, beyond a reasonable doubt, and that the defendant conspired with such person to do the act.

J. No. 10. The jury is instructed that it can not find the defendant guilty upon the testimony alone of an accomplice or accomplices, but that the testimony of such accomplice or accomplices must be corroborated by other evidence, and every fact material to defendant's guilt, proven by such accomplice or accomplices, must be corroborated by other evidence in order to convict the defendant upon such testimony, and the mere killing of said Goebel, and the circumstances thereof, is not corroborative of such accomplice or accomplices.

K. No. 11. Although the jury may believe from the evidence, beyond a reasonable doubt, that the defendant, with others, took armed men to Frankfort for an unlawful purpose, yet if the jury further believes from the evidence that such unlawful purpose was afterward abandoned, and that William Goebel was not killed in pursuance of such unlawful purpose, if it believes from the evidence there was such unlawful purpose, then the jury must find the defendant not guilty.

L. No. 12. The evidence of A. L. Reed, J. B. Watkins, Zepekiah Settles, and H. C. Hazelwood can only be considered by the jury for the purpose of contradicting and affecting the credibility and interest of the witness, and not as substantive testimony against the defendant.

A copy attest:

GEORGE S. ROBINSON, C. S. C. S.

By A. J. Coffey, D. C.

INSTRUCTIONS GIVEN BY THE COURT ON MY
FIRST TRIAL

I

The Court instructs the jury that a criminal conspiracy is a corrupt combination of two or more persons by concerted action to do an unlawful act or do a lawful act by unlawful means.

The Court further instructs the jury that an accessory before the fact is one, who, being absent at the time the act is committed procures, aids, counsels, commands, advises or abets another to commit it, and may be taken, tried and convicted, although the person who committed the act is never identified, apprehended or tried.

II

If the jury believes from the evidence, beyond a reasonable doubt, that the defendant, Caleb Powers, did in Franklin County, and before the finding of the indictment therein, unlawfully and feloniously and with malice aforethought and with intent to bring about or to procure the death of William Goebel, conspire with W. H. Culton, F. W. Golden, Green Golden, John L. Powers, John Davis, Charles Finley, W. S. Taylor, Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or any one or more of them, or other person or persons unknown to the jury, and acting with them or either of them, and did advise, counsel, encourage, aid or procure Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or any one or more of them, or other person or persons unknown to the jury, and acting with them or either of them, and did advise, counsel, encourage, aid or procure Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or any of them, or any unknown person or persons acting with them or either of them, to unlawfully, wilfully, feloniously, and with malice aforethought, shoot and kill William

Goebel, and that, in pursuance of said conspiracy and in pursuance to counsel, advice, encouragement, aid or procurement, so as aforesaid given by the defendant, the said Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or other person or persons unknown to the jury acting with them, or either or any of them, did shoot and wound the said William Goebel with a gun or pistol loaded with powder and leaden ball or other hard substance, and from which shooting and wounding the said William Goebel did then and there within a year and a day die, they ought to find the defendant guilty of murder and fix his punishment at death or confinement in the state penitentiary for life in their discretion.

III

If the jury believes from the evidence, beyond a reasonable doubt, that the defendant, Caleb Powers, conspired with, aided, abetted, counseled or advised W. H. Culton, F. W. Golden, Green Golden, John L. Powers, John Davis, Charles Finley, W. S. Taylor, Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or either or any of them, or some unknown person or persons acting with either of them, to kill and murder William Goebel, and in pursuance of such conspiracy and in furtherance thereof, the said William Goebel was killed by Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or either or any of them, or by some unknown person or persons acting with them as a member or members of such conspiracy, by shooting said William Goebel with a gun or pistol loaded with a leaden or steel ball or other hard substance, and from which shooting and wounding said Goebel then and there did within a year and a day die, it ought to find the said Caleb Powers guilty, whether he was present at the time of the shooting or wounding or not, or whether the identity of the person so shooting and wounding said William Goebel be established or not; and if the jury shall find the defendant guilty it ought to fix his punishment as indicated in instruction No. 2.

IV

If the jury believes from the evidence, beyond a reasonable doubt, that the defendant, Caleb Powers, conspired with W. H. Culton, F. W. Golden, Green Golden, John L. Powers, John Davis, James Howard, Berry Howard, Charles Finley, W. S. Taylor, Holland Whittaker, Richard Combs, Henry Youtsey, or either or any of them, or other person or persons unknown to the jury acting with them to bring a number of armed men to Frankfort for the purpose of doing an unlawful or criminal act in pursuance of such conspiracy, defendant did advise, counsel or encourage the killing of members of the Legislature, said William Goebel being a member thereof, and said Goebel was killed in pursuance of such advice, counsel, or encouragement, then the defendant is guilty of murder, whether the person who perpetrated the act which resulted in the death of William Goebel be identified or not, and if the killing of said William Goebel was committed in pursuance of such advice, counsel or encouragement, and was induced and brought about thereby, it does not matter what change, if any, was made by the conspirators, if any was made, as to their original designs or intentions, or the manner of accomplishing the unlawful purpose of the conspiracy.

V

If the jury believes from the evidence, beyond a reasonable doubt, that there was in existence, in the county of Franklin and the state of Kentucky, a conspiracy to kill and murder William Goebel, as set forth in the indictment, and that the defendant, Caleb Powers, was a party to said conspiracy, and that William Goebel was killed by one of the persons named in the indictment, to wit: W. H. Culton, F. W. Golden, Green Golden, John L. Powers, John Davis, Charles Finley, W. S. Taylor, Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or by any person or persons unknown acting with the defendant and in manner as set forth in the indictment, and the shot was fired which brought about his death in furtherance of such conspiracy, all persons who were members of such conspiracy at the time were

guilty of murder, and if the jury further believes from the evidence, beyond a reasonable doubt, that the defendant, Caleb Powers, was a member of such conspiracy at the time, it ought to find him guilty, although the jury may believe from the evidence at the time of the shooting, wounding and killing of William Goebel that said Powers was not present, and the time of the killing of said Goebel had not been definitely fixed and agreed upon by the conspirators, if there was a conspiracy to kill said Goebel.

VI

If the jury believes from the evidence, beyond a reasonable doubt, that a conspiracy was formed between the defendant and W. H. Culton, F. W. Golden, Green Golden, John L. Powers, John Davis, Charles Finley, W. S. Taylor, Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, or either or any of them, or with others to the jury unknown acting in concert with them, or either of them, to kill William Goebel, then, after the formation of said conspiracy, if any, every act and declaration of each of the conspirators done or said in furtherance of the common design, before the consummation thereof, became the act or declaration of all engaged in the conspiracy.

VII

The Court instructs the jury that if it believes from the evidence, beyond a reasonable doubt, that the defendant, Caleb Powers, conspired with W. H. Culton, F. W. Golden, Green Golden, John L. Powers, John Davis, Charles Finley, W. S. Taylor, Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or any one or more of them, or with some other person or persons unknown to the jury acting with them, or either of them, to do some unlawful act, and that in pursuance of such conspiracy or in furtherance thereof, the said Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or some one of them, or some other person unknown to the jury acting with them or with those who conspired with the defendant, if any such conspir-

acy there was, to do the unlawful act, did shoot and kill William Goebel, the defendant is guilty, although the jury may believe from the evidence that the original purpose was not to procure or bring about the death of William Goebel, but was for some other unlawful and criminal purpose.

VIII

The jury can not convict the defendant upon the testimony of an accomplice, unless such testimony be corroborated by other evidence tending to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof.

IX

Every fact and circumstance necessary to constitute the guilt of the defendant ought to be proved to the satisfaction of the jury, beyond a reasonable doubt, and unless the defendant has been so proven guilty, beyond a reasonable doubt, the jury ought to find him not guilty.

Thereupon, after four of the five speeches for the defendant and four of the five speeches for the Commonwealth had been made, the Court, of its own motion, added to the seventh instruction above set out, as having been given by the Court, the following words, viz: "The words 'some unlawful act,' as used in this instruction, means some act to alarm, to excite terror or the infliction of bodily harm." To which action of the Court in thus adding to said instruction and to the addition to the instruction, the defendant at the time objected and excepted and still excepts. The said instruction, after the addition above referred to was made, reads as follows:

"The Court instructs the jury that if it believes from the evidence, beyond a reasonable doubt, that the defendant, Caleb Powers, conspired with W. H. Culton, F. W. Golden, Green Golden, John L. Powers, John Davis, Charles Finley, W. S. Taylor, Henry Youtsey, James Howard, Berry Howard, Hol-

land Whittaker, Richard Combs, or any one or more of them, or with some other person or persons unknown to the jury acting with them or either of them, to do some unlawful act, and that in pursuance of such conspiracy or in furtherance thereof, the said Henry Youtsey, James Howard, Berry Howard, Holland Whittaker, Richard Combs, or some one of them or some other person unknown to the jury acting with them or with those who conspired with the defendant, if any such conspiracy was there to do the unlawful act, did shoot and kill William Goebel, the defendant is guilty, although the jury may believe from the evidence that the original purpose was not to procure or bring about the death of William Goebel, but was for some other unlawful and criminal purpose.

The words, "Some unlawful act," as used in this instruction, means some act to alarm, to excite terror or the infliction of bodily harm.

The foregoing were all the instructions asked, given or refused.

A copy attest:

GEORGE S. ROBINSON, C. S. C. S.

By A. J. Coffey, D. C.

APPENDIX E

GOVERNOR DURBIN'S LETTER TO THE GOVERNOR OF KENTUCKY

INDIANAPOLIS, IND., November 2, 1901.

Dear Sir: For the second time requisitions have been made to the governor of this Commonwealth, issued by your authority, asking for the extradition of William S. Taylor and Charles Finley, alleged fugitives from justice from the state of Kentucky, and at this time residing in the state of Indiana. The indictment presented charges these men with being accessories before the fact to the wilful murder of William Goebel. I respectfully decline to honor the requisitions.

The reasons given for a similar action on the part of my predecessor, the lamented ex-Governor Mount, still obtain in a pertinent manner as a basis for this refusal, reinforced as they are by events that have occurred since that time, which only tend to establish the conviction of those who believe in equal and exact justice under the law of all men, that the time has not yet arrived within the environment of this prosecution whereby an unprejudiced and non-partizan hearing of a trial could be had. I choose to make use of the right and the duty as the executive of the Commonwealth to exercise a discretionary power of refusal, to the end that the purposes of persecution, which seem to be the conspicuous feature of this prosecution, may not force these men before a court partizan to the very extreme of vindictiveness and a jury organized for conviction in its personnel and impanelment.

I have given careful and conscientious consideration to the evidence produced in the case already heard of the persons accused of complicity in the murder of William Goebel, as

far as it has been placed in my hands by the attorneys for the prosecution, and I unhesitatingly affirm that conviction based upon such a mass of self-evident perjury reflects the poisoned passions of a court and jury, and strengthens the belief that were those requisitions honored I would be only aiding the determination of the prosecution to convict these men without any reference to the law, justice or fact. I can not cause a man, from whom the presumption of innocence should never be stripped, except by legal methods, to be subjected to the rapine of political persecution. Kentucky is a Commonwealth revered for its high sense of justice and honor; it has given to the jurisprudence of the country some of the ablest lawyers of the nation; it has honorable representation on the supreme bench; it is the birthplace of Abraham Lincoln, the embodiment of justice, who dedicated his life to securing the rights of all men under the law.

It is a state wherein, very generally, justice has been signally exemplified in the practice and purposes of courts, and this honorable record only emphasizes in conspicuous comparison the odious acts which, in the trial court of Judge Cantrill, have been permitted in the name of law where the life and liberty of citizens are at stake. Can a fair trial be had for those under indictment? What was the object in appropriating one hundred thousand dollars for the conviction of the suspected murderers of William Goebel? Does not the evidence demonstrate that a portion of this sum has been paid for perjury? In the recent trial of Caleb Powers, why should judicial proprieties have been outraged by the refusal of Judge Cantrill to give a change of venue from his hearing? Why should a jury of twelve partizans of the late Mr. Goebel be selected to try the cause at bar?

In striking contrast to the ultra partizanship of the Kentucky judge and jury, I recall an example of the profound sense of justice that characterized a case, largely political in its character, that came before the federal court in Indianapolis shortly after the war, when party spirit was at its zenith. The Democratic treasurer of Jennings County was on trial. General Harrison appeared for the prosecution and ex-Governor Hendricks for the defense.

The regular panel of jurymen was in the box. Judge Walter Q. Gresham was on the bench. Mr. Hendricks first appealed to the court for a political poll of the jury and then for a special jury to be composed of an equal number from the Democratic and Republican parties. He made a most earnest and eloquent appeal that justice to his client and the political character of the case demanded that the jury should be evenly divided between the two leading political parties, and no advantage be given over his client by the insidious influences of a preponderating partizan bias in the jury. Judge Gresham very promptly granted the request, and a new jury was impaneled, as asked for by Mr. Hendricks. Compare this act of justice, based on the proposition that no political judge or advantage should enter into the jury-box, with the record of the court and jury in the cases that have so far had a hearing in the trials of the alleged murderers of Mr. Goebel.

On this subject Thomas Jefferson wrote: "An officer who is intrusted by the law with the sacred duty of naming judges of life and death for his fellow citizen, and who elects them from among his political and party friends, ought never to have in his power a second abuse of that tremendous magnitude."

Does not the action of the court of appeals of Kentucky, in its reversal of the initial conviction in Judge Cantrill's court, emphasize the contention of the governor of this Commonwealth that these men sought to be extradited can not secure a fair and just hearing? Judge Cantrill, candidate for a United States senatorship, instructed a jury that it might convict on the testimony of one alleged accomplice if that testimony was corroborated by that of another alleged accomplice; that it might convict the defendant for the act of another man, to which the defendant had never agreed, and which was not the necessary or probable consequence of anything to which the defendant had agreed. It is remarkable that the trial court compelled the defendant to answer the prosecutor's questions in relation to other crimes than the one for which he was on trial, and then, over protests, permitted the specially employed attorney for the

prosecution to make an impassioned plea to the jury to hang the defendant on accusations entirely outside of the record. To such a perversion of justice I will not consent to consign any citizen of this Commonwealth, be his residence temporary or permanent.

The monstrous rulings and instructions of the court, with its vicious partizanship further represented by a jury unanimously made up of Goebel Democrats, is of itself sufficient cause for a refusal of your request; but, added to this, I have on file letters and protests from many representative Democrats of your state, prominent in the organization of the party, and from editors of Democratic newspapers, universally condemning the persecution in the Goebel trials as a travesty upon justice, and urging that no requisitions be honored for Mr. Taylor and Mr. Finley until reason has resumed sway, and the good name of Kentucky, in its procedures under the law in its courts, be restored.

I had hoped the trial of Caleb Powers, just concluded, would demonstrate that the efforts of the prosecution were really to determine who the murderers of Mr. Goebel were in a way that would convince the people of the country of a sincere determination to this end; that the jury would be selected for its integrity rather than its partizanship; that the court would remember its obligations as a judge rather than its aspirations for a senatorship; that the rules of evidence having universal recognition in all the states of the Republic would be followed in this latest trial, especially in view of the reversal of the court of appeals in the former trials. It is a deep disappointment that the utter disregard of justice which marked the previous trial was as notorious in the second trial of Powers as in the first. Consequently I can only voice my condemnation thereof by refusing to honor your requisition, which, in effect, would make me a party to the conviction and punishment of two reputable citizens of Indiana.

When better assurances of a fair and impartial trial of Messrs. Taylor and Finley shall be given by the trial of those now in Kentucky under indictment for participating in the assassination of Mr. Goebel, and the record of the procedure

shall show that an impartial judge sat on the bench, and non-partizan jurors filled the box, your requisitions will be honored.

Until the time comes that justice is meted out to those now under the jurisdiction of the courts of Kentucky, a requisition leading to such a travesty upon justice as the last trial of Caleb Powers presented will not be honored by the surrender of citizens of Indiana, by any official act of mine.

Respectfully,

WINFIELD T. DURBIN,
Governor of Indiana.

To His Excellency, J. C. W. Beckham,
Governor of Kentucky, Frankfort, Ky.

GOVERNOR BECKHAM'S REPLY TO GOVERNOR DURBIN

FRANKFORT, KY., November 11, 1901.

*The Honorable Winfield T. Durbin, Governor of Indiana,
Indianapolis, Ind.*

Sir: Your refusal to honor the requisitions some time ago sent you by me, asking for the extraditions of W. S. Taylor and Charles Finley, fugitives from justice from this state, charged with being accessories to the murder of William Goebel, was not unexpected; but the remarkable letter with which you accompanied the return of the papers was indeed a surprise to me, and I sincerely regret the necessity of this reply. It is true I had been reliably informed that you had incurred campaign obligations which committed you to the protection of these two valuable adjuncts to your political fortunes, and that they had been promised immunity from arrest through requisitions from the Kentucky authorities in the event of your election as governor. This information has been confirmed by your conduct and by the complete sense of protection under which these two men seem to have rested since your incumbency of the office.

You are at least entitled to the credit of having faithfully carried out your reputed agreement with them, however much in doing so you have violated your oath of office and brought discredit upon the high position you hold. But even with this understanding of your embarrassing position, confronted, as you were, on the one side by the law and justice and on the other by a miserable political bargain, I could not believe that you would so far forget the dignity and obligation of your office and the courteous relations that exist among the chief executives of the various states, as to go out of your way to offer a gratuitous insult to the people of Kentucky, and to cast a reflection upon the courts and public officials of the state. If these slanderous charges had come from you as an individual, then they would be treated with the silent contempt they so justly deserve; but as they come from you as the governor of a great state, I shall not hesitate to hold you up to public scorn, and show how unjust and unfounded are the wilful and inexcusable misrepresentations in your letter.

When your predecessor, the late Governor Mount, refused to honor similar requisitions made on him by me, I declined to criticize him, because, while he had acted under gross misrepresentations to him as to the facts and an erroneous conception of his official power in the matter, I yet believed that he had been governed by honest and conscientious convictions. I can not say so much for you. You are not entitled to such an excuse, for when, with the record in your hands, you deliberately misquote that record in order to forge a libel against the courts and citizens of this state, the plea of ignorance can not be entered in your behalf. Forgetful of the duties and proprieties of the exalted position you occupy as the chief executive of a sovereign state, and blinded with partizan hate, you have not only cast an insult upon a brave and generous people, but you have also exercised a power which has been expressly denied you by the constitution and laws of the United States, which you swore to uphold and support, when you took the oath of office.

In your letter refusing these requisitions, you say, "I choose to make use of the right and the duty as the executive of the

Commonwealth to exercise a discretionary power of refusal." Let us see what the law is as to this "discretionary power." Since I have been governor of Kentucky I have never refused to honor the requisition of the governor of any state, and I have honored no less than a dozen issued upon me at different times by the governor of Indiana. It has been my view of the law that my duty in such matters was purely ministerial, not discretionary, and I have believed that whenever a requisition was presented to me with the papers properly made out, it was my duty, not to tie the case, but to issue the proper warrant of arrest for the fugitive and have him surrender to the proper officer. But it is not necessary to argue this question. A statement of the law is sufficient to convince any one save an apologist of Goebel's assassination. In Article 4, Section 2, of the Constitution of the United States, is the following provision concerning "Fugitives from Justice":

"A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled be delivered up to be removed to the state having jurisdiction of the crime."

Then Section 5278, of the Revised Statutes of the United States, reads as follows:

"Whenever the executive authority of any state or territory demands any person as a fugitive from justice of the executive authority of any state or territory to which such person has fled and produces a copy of an indictment found or an affidavit made before a magistrate of any state or territory charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territory to which such person has fled to cause him to be arrested and secured and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear."

Observe that the word "shall" is used in both the constitutional provisions and in the statute. The expression, "It

shall be the duty," does not allow any "discretionary power." But in order to avoid any discussion whatever as to the meaning of the law, let us examine the opinion of the supreme court of the United States in regard to it. In the case of *Kentucky vs. Dennison* (65th U. S. Reports), where the governor of Ohio had refused to deliver a fugitive asked for by the governor of Kentucky, that court, while refusing to grant the mandamus asked for, claiming that it had no power to grant it in such a case, nevertheless, said the chief justice, delivering the opinion of the court:

"It will be observed that the judicial acts which are necessary to authorize the demand are plainly specified in the act of Congress; and the certificate of the executive authority is made conclusive as to their verity when presented to the executive of the state where the fugitive is found. He has no right to look behind the character of the crime specified in this judicial proceeding. The duty which he is to perform is, as we have already said, merely ministerial—that is, to cause the party to be arrested and delivered to the agent or authority of the state where the crime was committed. It is said in the argument that the executive officer upon whom this demand is made must have a discretionary executive power, because he must inquire and decide who is the person demanded. But this certainly is not a discretionary duty upon which he is to exercise any judgment, but is merely a ministerial duty—that is, to do the act required to be done by him, and such as every marshal and sheriff must perform when process, either criminal or civil, is placed in his hands to be served on the person named in it. And it has never been supposed that this duty involved any discretionary power or made him anything more than a mere ministerial officer; and such is the position and character of the executive of the state under the law, when the demand is made upon him and the requisite evidence produced. The governor has only to issue his warrant to an agent or officer to arrest the party named in the demand."

I commend the entire opinion in this case for your perusal and study, with the hope that you may profit by the instruction, and not again, when dealing with such matters, speak

of "discretionary powers." Remember, too, that the construction placed upon the constitution by the highest court in the land becomes itself a part of that instrument which you took an oath, when you became governor of Indiana, to support. A comparison of your letter with the decision of the supreme court is sufficient to show whether you have been faithful to this oath.

Passing on from showing how you have disregarded the constitution and law of your country, I will proceed to show how you have perverted the record in the recent trial of Caleb Powers and sought by such action to bring discredit upon an honorable and upright judge, whose life of public service has been unstained by a single dishonorable act, and whose character as a man and as a jurist stands unimpeached among the good people of this state.

You criticize the recent trial of Powers and denounce Judge Cantrill for his instructions to the jury. You say^e in your letter he instructed it "that it might convict on the testimony of one alleged accomplice if that testimony was corroborated by that of another alleged accomplice; that it might convict the defendant for the act of another man, to which the defendant had never agreed," etc. To show how untrue the statement is I reproduce from the record the exact instruction of the judge in that case on this point:

"Eighth—The jury can not convict the defendant upon the testimony of an accomplice or of accomplices unless the testimony be corroborated by other evidence tending to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof."

Is this a manly way to attack any one? Is it right and proper to manufacture evidence to blacken, if possible, his character? You insinuate, too, that the judge has been influenced in his trials of these cases by his aspirations as a candidate for the United States senate. If rumor speak true, you are not above suspicion in that respect yourself, and the rancorous spirit of your letter shows that you are making a bid for the support of the implacables and radicals in your own party, with a view to that end. I doubt the wisdom of

your policy to secure such an honor. The people of Indiana love fair play, and although at times stirred to a high pitch of excitement in political contests, they are nevertheless broad-minded, liberal and obedient to the law. My confidence in them and in their civil institutions is so great that I will never, while governor of Kentucky, cast a reflection upon them or upon their courts by refusing to surrender to them a violator of their laws, when properly demanded, even though the fugitive should be of my own political faith and charged with conspiring to murder his political opponent whom he could not defeat otherwise. The good people of your state do not indorse you in this matter.

I wish to call attention to another misstatement in your letter. You say you have on file letters and protests from "many representative Democrats of this state, prominent in the organization of the party, and from editors of Democratic newspapers," asking you to refuse to honor these requisitions. I make the assertion, and you can not disprove it by producing such a letter, that not a Democrat in Kentucky belonging to the organization of the party, nor the editor of any Democratic newspaper, has made such a request of you.

I have no doubt that some of the people who have urged you not to give up these men did so, not because they thought fair trials would be denied them, but because they feared that closer investigation into this crime would disclose their part in the conspiracy.

There is no doubt now that the assassination of William Goebel on the State Capitol grounds was the result of a deliberate and carefully planned conspiracy; that he was shot from a window in the office of the secretary of state, not over forty feet from the governor's office, where W. S. Taylor was when the shot was fired; that Taylor immediately had all the entrances to the building guarded and forbade the admission of the peace officers who sought to enter and search for the assassin; that he threw every obstacle in his power in the way of preventing the arrest and conviction of any one suspected of the crime; that he issued his pardons to some of those under suspicion, even before their arrest and indictment; that he was presumably the beneficiary in the

death of William Goebel, who was contesting with him the title of the governorship of Kentucky; that he refused to recognize the writ of habeas corpus, filled the state capital with over a thousand armed desperadoes, and threatened the entire state with revolution and anarchy; and that to-day he is a cringing suppliant at your feet, begging that he be not given over to trial on an indictment charging him with being a conspirator in the murder of his successful rival.

It would be no satisfaction to any one to punish an innocent man for this crime. The mind of any civilized man revolts at such an idea. The brother and friends of the murdered governor simply demand the punishment of those who conspired to kill him. No political advantage could be gained by any one or any party in convicting the two self-confessed criminals now basking in the smiles of your protecting care. They are certainly not political factors now sufficient to excite fear in the humblest heart, and if they are innocent a Kentucky jury and Kentucky courts would throw around them every possible protection and vindication. You show in your letter itself that they are not in danger of "judicial persecution" when you call attention to the reversal of the case of Howard and the first trial of Powers by the court of appeals of this state. That court is composed of seven upright and honorable judges, four of whom are of the same political party as yourself and these two fugitives. That court would certainly never permit a judgment of Judge Cantrill's court to stand if what you say about it is true.

You ask: "Why, in the recent trial of Caleb Powers, should judicial proprieties have been outraged by the refusal of Judge Cantrill to give a change of venue from his hearing?" Another misstatement. Powers did not ask for such a change. In his first trial he did ask it, and it was changed by removing the case from Frankfort County to Scott County, under our law, which requires a judge in granting a change of venue to send it to an adjacent county within the same district.

You ask again: "What was the object in appropriating one hundred thousand dollars for the conviction of the suspected murderers of William Goebel?" The same object

which prompted the government to pay secret service men and other detectives to discover if possible whether the miserable wretch Czolgosz had any confederate in his dastardly crime. Only seven thousand dollars has been spent of the Goebel reward fund, all in the legitimate expenses of the trials, and it is safe to assert that at least that much has already been spent in the laudable purpose of trying to discover the anarchist plot to murder our lamented president.

Again you ask: "Does not the evidence demonstrate that a portion of this sum has been paid for perjury?" There has not been a scintilla of evidence to that effect ever introduced, and your question was not asked in good faith. On the contrary, in the last trials of Powers strong evidence was introduced to show that some of his friends had sought to bribe witnesses for the Commonwealth.

Your reference to the Jennings County, Indiana, case was unfortunate for yourself, for, if I am correctly informed, your part in it was not very creditable to you, and should have acted as an estoppel upon you from ever criticizing the make-up of a jury.

But I shall not prolong this communication by undertaking to show all the inaccuracies and misrepresentations you have used. I am sorry that your letter necessitated such a plain and frank statement of the facts.

The honored name of Kentucky needs no defense at your hands. Her history is one of which we are justly proud. Over a hundred years ago she became a Commonwealth in the American Union, and her pioneer citizens cleared the forests, built homes, schools, churches, established civil government and quickly placed her among the first states of the Union. Her people are brave, generous, hospitable and obedient to the law. Life, liberty, and property are as safe within her borders as anywhere on earth. Only one time in her history were these blessings threatened, and that was brought about by these two fugitives whom you harbor and some of their associates. It was then, too, that the great body of Kentuckians showed their splendid character, their forbearance and their profound respect for the law and the constituted authorities, and it was their patient courage at

such a critical time that brought order out of chaos, government out of anarchy. Such a people as these could neither be helped by your praise nor harmed by your scurrilous abuse, and such a people would never knowingly permit any one to be unjustly deprived of life or liberty.

In concluding your letter you say that my requisition has been refused because you did not want to make yourself a party to the "conviction and punishment of two reputable citizens of Indiana." But by such refusal you have made yourself a party after the fact to the most infamous crime in the history of this state, the cold-blooded and dastardly murder of an eminent and distinguished citizen of Kentucky, who had been elected to the highest office within the gift of our people.

Respectfully,

J. C. W. BECKHAM,
Governor of Kentucky.

LIBRARY OF CONGRESS



0 014 613 922 A